



# Enterprise Act 2002

## CHAPTER 40

Explanatory Notes have been produced to assist in the understanding of this Act and are available separately





# Enterprise Act 2002

## CHAPTER 40

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# Enterprise Act 2002

## 2002 CHAPTER 40

Establish and provide for the functions of the Office of Fair Trading, the Competition Appeal Tribunal and the Competition Service; to make provision about mergers and market structures and conduct; to amend the constitution and functions of the Competition Commission; to create an offence for those entering into certain anti-competitive agreements; to provide for the disqualification of directors of companies engaging in certain anti-competitive practices; to make other provision about competition law; to amend the law relating to the protection of the collective interests of consumers; to make further provision about the disclosure of information obtained under competition and consumer legislation; to amend the Insolvency Act 1986 and make other provision about insolvency; and for connected purposes.

[7th November 2002]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### THE OFFICE OF FAIR TRADING

##### *Establishment of OFT*

#### **1 The Office of Fair Trading**

- (1) There shall be a body corporate to be known as the Office of Fair Trading (in this Act referred to as “the OFT”).
- (2) The functions of the OFT are carried out on behalf of the Crown.
- (3) Schedule 1 (which makes further provision about the OFT) has effect.

- (4) In managing its affairs the OFT shall have regard, in addition to any relevant general guidance as to the governance of public bodies, to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the OFT.

## **2 The Director General of Fair Trading**

- (1) The functions of the Director General of Fair Trading (in this Act referred to as “the Director”), and his property, rights and liabilities, are transferred to the OFT.
- (2) The office of the Director is abolished.
- (3) Any enactment, instrument or other document passed or made before the commencement of subsection (1) which refers to the Director shall have effect, so far as necessary for the purposes of or in consequence of anything being transferred, as if any reference to the Director were a reference to the OFT.

## **3 Annual plan**

- (1) The OFT shall, before each financial year, publish a document (the “annual plan”) containing a statement of its main objectives and priorities for the year.
- (2) The OFT shall for the purposes of public consultation publish a document containing proposals for its annual plan at least two months before publishing the annual plan for any year.
- (3) The OFT shall lay before Parliament a copy of each document published under subsection (2) and each annual plan.

## **4 Annual and other reports**

- (1) The OFT shall, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the “annual report”) on its activities and performance during that year.
- (2) The annual report for each year shall include—
  - (a) a general survey of developments in respect of matters relating to the OFT’s functions;
  - (b) an assessment of the extent to which the OFT’s main objectives and priorities for the year (as set out in the annual plan) have been met;
  - (c) a summary of the significant decisions, investigations or other activities made or carried out by the OFT during the year;
  - (d) a summary of the allocation of the OFT’s financial resources to its various activities during the year; and
  - (e) an assessment of the OFT’s performance and practices in relation to its enforcement functions.
- (3) The OFT shall lay a copy of each annual report before Parliament and arrange for the report to be published.
- (4) The OFT may—
  - (a) prepare other reports in respect of matters relating to any of its functions; and
  - (b) arrange for any such report to be published.



### *General functions of OFT*

#### **5 Acquisition of information etc.**

- (1) The OFT has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions.
- (2) That function is to be carried out with a view to (among other things) ensuring that the OFT has sufficient information to take informed decisions and to carry out its other functions effectively.
- (3) In carrying out that function the OFT may carry out, commission or support (financially or otherwise) research.

#### **6 Provision of information etc. to the public**

- (1) The OFT has the function of—
  - (a) making the public aware of the ways in which competition may benefit consumers in, and the economy of, the United Kingdom; and
  - (b) giving information or advice in respect of matters relating to any of its functions to the public.
- (2) In carrying out those functions the OFT may—
  - (a) publish educational materials or carry out other educational activities; or
  - (b) support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.

#### **7 Provision of information and advice to Ministers etc.**

- (1) The OFT has the function of—
  - (a) making proposals, or
  - (b) giving other information or advice,on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law).
- (2) A Minister of the Crown may request the OFT to make proposals or give other information or advice on any matter relating to any of its functions; and the OFT shall, so far as is reasonably practicable and consistent with its other functions, comply with the request.

#### **8 Promoting good consumer practice**

- (1) The OFT has the function of promoting good practice in the carrying out of activities which may affect the economic interests of consumers in the United Kingdom.
- (2) In carrying out that function the OFT may (without prejudice to the generality of subsection (1)) make arrangements for approving consumer codes and may, in accordance with the arrangements, give its approval to or withdraw its approval from any consumer code.

- (3) Any such arrangements must specify the criteria to be applied by the OFT in determining whether to give approval to or withdraw approval from a consumer code.
- (4) Any such arrangements may in particular –
  - (a) specify descriptions of consumer code which may be the subject of an application to the OFT for approval (and any such description may be framed by reference to any feature of a consumer code, including the persons who are, or are to be, subject to the code, the manner in which it is, or is to be, operated and the persons responsible for its operation); and
  - (b) provide for the use in accordance with the arrangements of an official symbol intended to signify that a consumer code is approved by the OFT.
- (5) The OFT shall publish any arrangements under subsection (2) in such manner it considers appropriate.
- (6) In this section “consumer code” means a code of practice or other document (however described) intended, with a view to safeguarding or promoting the interests of consumers, to regulate by any means the conduct of persons engaged in the supply of goods or services to consumers (or the conduct of their employees or representatives).

*Miscellaneous*

## **9 Repeal of certain powers of direction**

Section 12 of the Fair Trading Act 1973 (c. 41) (in this Act referred to as “the 1973 Act”) and section 13 of the Competition Act 1980 (c. 21) (powers of Secretary of State to give directions) shall cease to have effect.

## **10 Part 2 of the 1973 Act**

- (1) The following provisions of the 1973 Act shall cease to have effect –
  - (a) section 3 and Schedule 2 (which establish, and make provision with respect to, the Consumer Protection Advisory Committee);
  - (b) sections 13 to 21 (which relate to references made to, and reports of, that Committee); and
  - (c) section 22 (power of Secretary of State to make orders in pursuance of a report of that Committee).
- (2) But subsection (1)(c) does not affect –
  - (a) any order under section 22 of the 1973 Act which is in force immediately before the commencement of this section;
  - (b) the continued operation of that section so far as applying to the revocation of any such order.
- (3) If the orders saved by subsection (2)(a) have been revoked, the Secretary of State may by order –
  - (a) repeal any unrepealed provision of Part 2 of the 1973 Act and subsection (2) above; and
  - (b) make such other consequential modifications of any Act or subordinate legislation (whenever passed or made) as he thinks fit.

- (4) An order under subsection (3)—
  - (a) may make transitional or saving provision in connection with any modification made by the order; and
  - (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 11 Super-complaints to OFT

- (1) This section applies where a designated consumer body makes a complaint to the OFT that any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly harming the interests of consumers.
- (2) The OFT must, within 90 days after the day on which it receives the complaint, publish a response stating how it proposes to deal with the complaint, and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the complaint, and
  - (b) if it has decided to take action, what action it proposes to take.
- (3) The response must state the OFT’s reasons for its proposals.
- (4) The Secretary of State may by order amend subsection (2) by substituting any period for the period for the time being specified there.
- (5) “Designated consumer body” means a body designated by the Secretary of State by order.
- (6) The Secretary of State—
  - (a) may designate a body only if it appears to him to represent the interests of consumers of any description, and
  - (b) must publish (and may from time to time vary) other criteria to be applied by him in determining whether to make or revoke a designation.
- (7) The OFT—
  - (a) must issue guidance as to the presentation by the complainant of a reasoned case for the complaint, and
  - (b) may issue such other guidance as appears to it to be appropriate for the purposes of this section.
- (8) An order under this section—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section—
  - (a) references to a feature of a market in the United Kingdom for goods or services have the same meaning as if contained in Part 4, and
  - (b) “consumer” means an individual who is a consumer within the meaning of that Part.

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**PART 2**

## THE COMPETITION APPEAL TRIBUNAL

*The Competition Appeal Tribunal***12 The Competition Appeal Tribunal**

- (1) There shall be a tribunal, to be called the Competition Appeal Tribunal (in this Part referred to as “the Tribunal”).
- (2) The Tribunal shall consist of—
  - (a) a person appointed by the Lord Chancellor to preside over the Tribunal (in this Part referred to as “the President”);
  - (b) members appointed by the Lord Chancellor to form a panel of chairmen; and
  - (c) members appointed by the Secretary of State to form a panel of ordinary members.
- (3) The Tribunal shall have a Registrar appointed by the Secretary of State.
- (4) The expenses of the Tribunal shall be paid by the Competition Service.
- (5) Schedule 2 (which makes further provision about the Tribunal) has effect.

**13 The Competition Service**

- (1) There shall be a body corporate called the Competition Service (in this Part referred to as “the Service”).
- (2) The purpose of the Service is to fund, and provide support services to, the Competition Appeal Tribunal.
- (3) In subsection (2) “support services” includes the provision of staff, accommodation and equipment and any other services which facilitate the carrying out by the Tribunal of its functions.
- (4) The activities of the Service are not carried out on behalf of the Crown (and its property is not to be regarded as held on behalf of the Crown).
- (5) The Secretary of State shall pay to the Service such sums as he considers appropriate to enable it to fund the activities of the Tribunal and to carry out its other activities.
- (6) Schedule 3 (which makes further provision about the Service) has effect.

**14 Constitution of Tribunal for particular proceedings and its decisions**

- (1) For the purposes of any proceedings before it the Tribunal shall consist of a chairman and two other members.
- (2) The chairman must be the President or a member of the panel of chairmen.
- (3) The other members may be chosen from either the panel of chairmen or the panel of ordinary members.
- (4) If the members of the Tribunal as constituted in accordance with this section are unable to agree on any decision, the decision is to be taken by majority vote.

- (5) This section has effect subject to paragraph 18 of Schedule 4 (consequences of a member of the Tribunal being unable to continue after the proceedings have begun to be heard).
- (6) Part 1 of Schedule 4 (which makes further provision about the decisions of the Tribunal and their enforcement) has effect.

## 15 Tribunal rules

- (1) The Secretary of State may, after consulting the President and such other persons as he considers appropriate, make rules (in this Part referred to as “Tribunal rules”) with respect to proceedings before the Tribunal.
- (2) Tribunal rules may make provision with respect to matters incidental to or consequential upon appeals provided for by or under any Act to the Court of Appeal or the Court of Session in relation to a decision of the Tribunal.
- (3) Tribunal rules may –
  - (a) specify qualifications for appointment as Registrar;
  - (b) confer functions on the President or the Registrar in relation to proceedings before the Tribunal; and
  - (c) contain incidental, supplemental, consequential or transitional provision.
- (4) The power to make Tribunal rules is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Part 2 of Schedule 4 (which makes further provision about the rules) has effect, but without prejudice to the generality of subsection (1).

## 16 Transfers of certain proceedings to and from Tribunal

- (1) The Lord Chancellor may by regulations –
  - (a) make provision enabling the court –
    - (i) to transfer to the Tribunal for its determination so much of any proceedings before the court as relates to an infringement issue; and
    - (ii) to give effect to the determination of that issue by the Tribunal; and
  - (b) make such incidental, supplementary, consequential, transitional or saving provision as the Lord Chancellor may consider appropriate.
- (2) The power to make regulations under subsection (1) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Rules of court may prescribe the procedure to be followed in connection with a transfer mentioned in subsection (1).
- (4) The court may transfer to the Tribunal, in accordance with rules of court, so much of any proceedings before it as relates to a claim to which section 47A of the 1998 Act applies.
- (5) Rules of court may make provision in connection with the transfer from the Tribunal to the High Court or the Court of Session of a claim made in proceedings under section 47A of the 1998 Act.

- (6) In this section –
- “the court” means –
- (a) the High Court or a county court; or
  - (b) the Court of Session or a sheriff court; and
- “infringement issue” means any question relating to whether or not an infringement of –
- (a) the Chapter I prohibition or the Chapter II prohibition; or
  - (b) Article 81 or 82 of the Treaty,
- has been or is being committed;
- but otherwise any terms used in this section and Part 1 of the 1998 Act have the same meaning as they have in that Part.

*Proceedings under Part 1 of 1998 Act*

## 17 Third party appeals

For section 47 of the 1998 Act (third party appeals) there is substituted –

### “47 Third party appeals

- (1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to a decision falling within paragraphs (a) to (f) of section 46(3) or such other decision of the OFT under this Part as may be prescribed.
- (2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.
- (3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.”

## 18 Monetary claims

- (1) After section 47 of the 1998 Act there is inserted –

### “47A Monetary claims before Tribunal

- (1) This section applies to –
  - (a) any claim for damages, or
  - (b) any other claim for a sum of money,
 which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.
- (2) In this section “relevant prohibition” means any of the following –
  - (a) the Chapter I prohibition;
  - (b) the Chapter II prohibition;
  - (c) the prohibition in Article 81(1) of the Treaty;
  - (d) the prohibition in Article 82 of the Treaty;

- (e) the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community;
  - (f) the prohibition in Article 66(7) of that Treaty.
- (3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.
- (4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.
- (5) But no claim may be made in such proceedings –
  - (a) until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and
  - (b) otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.
- (6) The decisions which may be relied on for the purposes of proceedings under this section are –
  - (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or
  - (e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.
- (7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are –
  - (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46, section 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);
  - (b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49 or under those Regulations;
  - (c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
  - (d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.

- (8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—
    - (a) the period during which proceedings against the decision or finding may be instituted in the European Court; and
    - (b) if any such proceedings are instituted, the period before those proceedings are determined.
  - (9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.
  - (10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.”
- (2) Section 47A applies to claims arising before the commencement of this section as it applies to claims arising after that time.

## 19 Claims on behalf of consumers

After section 47A of the 1998 Act (which is inserted by section 18), there is inserted—

### “47B Claims brought on behalf of consumers

- (1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.
- (2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.
- (3) A consumer claim may be included in proceedings under this section if it is—
  - (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
  - (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;

and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.

- (4) The consumer claims included in proceedings under this section must all relate to the same infringement.
- (5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.



- (6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).
- (7) This subsection applies to goods or services which –
  - (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
  - (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.
- (8) A business includes –
  - (a) a professional practice;
  - (b) any other undertaking carried on for gain or reward;
  - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.
- (10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.”

*Other amendments of 1998 Act*

## **20 Findings of infringements**

- (1) After section 58 of the 1998 Act there is inserted –

*“Findings of infringements*

### **58A Findings of infringements**

- (1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of –
  - (a) the Chapter I prohibition;
  - (b) the Chapter II prohibition;
  - (c) the prohibition in Article 81(1) of the Treaty;
  - (d) the prohibition in Article 82 of the Treaty.
- (2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.
- (3) The decisions are –

- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed.
- (4) The periods mentioned in subsection (2) are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46 or 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);
  - (b) in the case of a decision of the Tribunal mentioned in subsection (3)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
  - (c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;
- and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined.”
- (2) Section 58A does not apply in relation to decisions made before the commencement of this section.
- (3) In section 59(1) of that Act (interpretation), in the definition of “the court”, after “58” there is inserted “, 58A”.

## 21 Amendment of 1998 Act relating to the Tribunal

Schedule 5 (which contains amendments of the 1998 Act relating to, and to the proceedings of, the Tribunal) has effect.

### PART 3

#### MERGERS

#### CHAPTER 1

##### DUTY TO MAKE REFERENCES

##### *Duty to make references: completed mergers*

## 22 Duty to make references in relation to completed mergers

- (1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—
- (a) a relevant merger situation has been created; and
  - (b) the creation of that 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.

- (2) The OFT may decide not to make a reference under this section if it believes that –
  - (a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission; or
  - (b) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.
- (3) No reference shall be made under this section if –
  - (a) the making of the reference is prevented by section 69(1), 74(1) or 96(3) or paragraph 4 of Schedule 7;
  - (b) the OFT is considering whether to accept undertakings under section 73 instead of making such a reference;
  - (c) the relevant merger situation concerned is being, or has been, dealt with in connection with a reference made under section 33;
  - (d) a notice under section 42(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the OFT under section 56(1); or
  - (e) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations, is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.
- (4) A reference under this section shall, in particular, specify –
  - (a) the enactment under which it is made; and
  - (b) the date on which it is made.
- (5) The references in this section to the creation of a relevant merger situation shall be construed in accordance with section 23, the reference in subsection (2) of this section to relevant customer benefits shall be construed in accordance with section 30 and the reference in subsection (3) of this section to a matter to which a notice under section 42(2) relates being finally determined under Chapter 2 shall be construed in accordance with section 43(4) and (5).
- (6) In this Part “market in the United Kingdom” includes –
  - (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and
  - (b) any market which operates only in a part of the United Kingdom;and references to a market for goods or services include references to a market for goods and services.
- (7) In this Part “the decision-making authority” means –
  - (a) in the case of a reference or possible reference under this section or section 33, the OFT or (as the case may be) the Commission; and
  - (b) in the case of a notice or possible notice under section 42(2) or 59(2) or a reference or possible reference under section 45 or 62, the OFT, the Commission or (as the case may be) the Secretary of State.

### **23 Relevant merger situations**

- (1) For the purposes of this Part, a relevant merger situation has been created if—
  - (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
  - (b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.
- (2) For the purposes of this Part, a relevant merger situation has also been created if—
  - (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
  - (b) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.
- (3) The condition mentioned in this subsection is that, in relation to the supply of goods of any description, at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom—
  - (a) are supplied by one and the same person or are supplied to one and the same person; or
  - (b) are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons.
- (4) The condition mentioned in this subsection is that, in relation to the supply of services of any description, the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is to the extent of at least one-quarter—
  - (a) supply by one and the same person, or supply for one and the same person; or
  - (b) supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.
- (5) For the purpose of deciding whether the proportion of one-quarter mentioned in subsection (3) or (4) is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.
- (6) References in subsections (3) and (4) to the supply of goods or (as the case may be) services shall, in relation to goods or services of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—
  - (a) as references to any of those forms of supply taken separately;
  - (b) as references to all those forms of supply taken together; or
  - (c) as references to any of those forms of supply taken in groups.
- (7) For the purposes of subsection (6) the decision-making authority may treat goods or services as being the subject of different forms of supply whenever—
  - (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
  - (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

- (8) The criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.
- (9) For the purposes of this Chapter, the question whether a relevant merger situation has been created shall be determined as at—
  - (a) in the case of a reference which is treated as having been made under section 22 by virtue of section 37(2), such time as the Commission may determine; and
  - (b) in any other case, immediately before the time when the reference has been, or is to be, made.

#### **24 Time-limits and prior notice**

- (1) For the purposes of section 23 two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within this section if—
  - (a) the two or more enterprises ceased to be distinct enterprises before the day on which the reference relating to them is to be made and did so not more than four months before that day; or
  - (b) notice of material facts about the arrangements or transactions under or in consequence of which the enterprises have ceased to be distinct enterprises has not been given in accordance with subsection (2).
- (2) Notice of material facts is given in accordance with this subsection if—
  - (a) it is given to the OFT prior to the entering into of the arrangements or transactions concerned or the facts are made public prior to the entering into of those arrangements or transactions; or
  - (b) it is given to the OFT, or the facts are made public, more than four months before the day on which the reference is to be made.
- (3) In this section—
  - “made public” means so publicised as to be generally known or readily ascertainable; and
  - “notice” includes notice which is not in writing.

#### **25 Extension of time-limits**

- (1) The OFT and the persons carrying on the enterprises which have or may have ceased to be distinct enterprises may agree to extend by no more than 20 days the four month period mentioned in section 24(1)(a) or (2)(b).
- (2) The OFT may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if it considers that any of those persons has failed to provide, within the period stated in a notice under section 31 and in the manner authorised or required, information requested of him in that notice.
- (3) An extension under subsection (2) shall be for the period beginning with the end of the period within which the information is to be provided and which is stated in the notice under section 31 and ending with—
  - (a) the provision of the information to the satisfaction of the OFT; or
  - (b) if earlier, the cancellation by the OFT of the extension.

- (4) The OFT may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if it is seeking undertakings from any of those persons under section 73.
- (5) An extension under subsection (4) shall be for the period beginning with the receipt of the notice under that subsection and ending with the earliest of the following events –
  - (a) the giving of the undertakings concerned;
  - (b) the expiry of the period of 10 days beginning with the first day after the receipt by the OFT of a notice from the person who has been given a notice under subsection (4) and from whom the undertakings are being sought stating that he does not intend to give the undertakings; or
  - (c) the cancellation by the OFT of the extension.
- (6) The OFT may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations (but is not yet proceeding with the matter in pursuance of such a request).
- (7) An extension under subsection (6) shall be for the period beginning with the receipt of the notice under that subsection and ending with the receipt of a notice under subsection (8).
- (8) The OFT shall, in connection with any notice given by it under subsection (6), by notice inform the persons carrying on the enterprises which have or may have ceased to be distinct enterprises of the completion by the European Commission of its consideration of the request of the United Kingdom.
- (9) Subject to subsections (10) and (11), where the four month period mentioned in section 24(1)(a) or (2)(b) is extended or further extended by virtue of this section in relation to a particular case, any reference to that period in section 24 or the preceding provisions of this section shall have effect in relation to that case as if it were a reference to a period equivalent to the aggregate of the period being extended and the period of the extension (whether or not those periods overlap in time).
- (10) Subsection (11) applies where –
  - (a) the four month period mentioned in section 24(1)(a) or (2)(b) is further extended;
  - (b) the further extension and at least one previous extension is made under one or more of subsections (2), (4) and (6); and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (11) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (10)(c) shall be disregarded.
- (12) No more than one extension is possible under subsection (1).

## **26 Enterprises ceasing to be distinct enterprises**

- (1) For the purposes of this Part any two enterprises cease to be distinct enterprises if they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control).
- (2) Enterprises shall, in particular, be treated as being under common control if they are—
  - (a) enterprises of interconnected bodies corporate;
  - (b) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control; or
  - (c) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.
- (3) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, may, for the purposes of subsections (1) and (2), be treated as having control of it.
- (4) For the purposes of subsection (1), in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if—
  - (a) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate; or
  - (b) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.

## **27 Time when enterprises cease to be distinct**

- (1) Subsection (2) applies in relation to any arrangements or transaction—
  - (a) not having immediate effect or having immediate effect only in part; but
  - (b) under or in consequence of which any two enterprises cease to be distinct enterprises.
- (2) The time when the parties to any such arrangements or transaction become bound to such extent as will result, on effect being given to their obligations, in the enterprises ceasing to be distinct enterprises shall be taken to be the time at which the two enterprises cease to be distinct enterprises.
- (3) In accordance with subsections (1) and (2) (but without prejudice to the generality of those subsections) for the purpose of determining the time at which any two enterprises cease to be distinct enterprises no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.
- (4) Subsections (1) to (3) are subject to subsections (5) to (8) and section 29.

- (5) The decision-making authority may, for the purposes of a reference, treat successive events to which this subsection applies as having occurred simultaneously on the date on which the latest of them occurred.
- (6) Subsection (5) applies to successive events –
  - (a) which occur within a period of two years under or in consequence of the same arrangements or transaction, or successive arrangements or transactions between the same parties or interests; and
  - (b) by virtue of each of which, under or in consequence of the arrangements or the transaction or transactions concerned, any enterprises cease as between themselves to be distinct enterprises.
- (7) The decision-making authority may, for the purposes of subsections (5) and (6), treat such arrangements or transactions as the decision-making authority considers appropriate as arrangements or transactions between the same interests.
- (8) In deciding whether it is appropriate to treat arrangements or transactions as arrangements or transactions between the same interests the decision-making authority shall, in particular, have regard to the persons substantially concerned in the arrangements or transactions concerned.

## **28 Turnover test**

- (1) For the purposes of section 23 the value of the turnover in the United Kingdom of the enterprise being taken over shall be determined by taking the total value of the turnover in the United Kingdom of the enterprises which cease to be distinct enterprises and deducting –
  - (a) the turnover in the United Kingdom of any enterprise which continues to be carried on under the same ownership and control; or
  - (b) if no enterprise continues to be carried on under the same ownership and control, the turnover in the United Kingdom which, of all the turnovers concerned, is the turnover of the highest value.
- (2) For the purposes of this Part (other than section 121(4)(c)(ii)) the turnover in the United Kingdom of an enterprise shall be determined in accordance with such provisions as may be specified in an order made by the Secretary of State.
- (3) An order under subsection (2) may, in particular, make provision as to –
  - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined;
  - (c) the connection with the United Kingdom by virtue of which an enterprise's turnover is turnover in the United Kingdom.
- (4) An order under subsection (2) may, in particular, make provision enabling the decision-making authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (3)).
- (5) The OFT shall –
  - (a) keep under review the sum for the time being mentioned in section 23(1)(b); and
  - (b) from time to time advise the Secretary of State as to whether the sum is still appropriate.



- (6) The Secretary of State may by order amend section 23(1)(b) so as to alter the sum for the time being mentioned there.

## 29 Obtaining control by stages

- (1) Where an enterprise is brought under the control of a person or group of persons in the course of two or more transactions (in this section a “series of transactions”) to which subsection (2) applies, those transactions may, if the decision-making authority considers it appropriate, be treated for the purposes of a reference as having occurred simultaneously on the date on which the latest of them occurred.
- (2) This subsection applies to—
- (a) any transaction which—
    - (i) enables that person or group of persons directly or indirectly to control or materially to influence the policy of any person carrying on the enterprise;
    - (ii) enables that person or group of persons to do so to a greater degree; or
    - (iii) is a step (whether direct or indirect) towards enabling that person or group of persons to do so; and
  - (b) any transaction by virtue of which that person or group of persons acquires a controlling interest in the enterprise or, where the enterprise is carried on by a body corporate, in that body corporate.
- (3) Where a series of transactions includes a transaction falling within subsection (2)(b), any transaction occurring after the occurrence of that transaction is to be disregarded for the purposes of subsection (1).
- (4) Where the period within which a series of transactions occurs exceeds two years, the transactions that may be treated as mentioned in subsection (1) are any of those transactions that occur within a period of two years.
- (5) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of this section to determine—
- (a) whether an enterprise is brought under the control of a person or group of persons; and
  - (b) whether a transaction is one to which subsection (2) applies;
- as they apply for the purposes of section 26 to determine whether enterprises are brought under common control.
- (6) In determining for the purposes of this section the time at which any transaction occurs, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.

## 30 Relevant customer benefits

- (1) For the purposes of this Part 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 (whether or not the market or markets in which the substantial lessening of competition concerned has, or may have, occurred or (as the case may be) may occur); or
    - (ii) greater innovation in relation to such goods or services; and

- (b) the decision-making authority believes –
  - (i) in the case of a reference or possible reference under section 22 or 45(2), as mentioned in subsection (2); and
  - (ii) in the case of a reference or possible reference under section 33 or 45(4), as mentioned in subsection (3).
- (2) The belief, in the case of a reference or possible reference under section 22 or section 45(2), is that –
  - (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
  - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
- (3) The belief, in the case of a reference or possible reference under section 33 or 45(4), is that –
  - (a) the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned; and
  - (b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.
- (4) In subsection (1) “relevant customers” means –
  - (a) customers of any person carrying on an enterprise which, in the creation of the relevant merger situation 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 subsection “customers” includes future customers.

### **31 Information powers in relation to completed mergers**

- (1) The OFT may by notice to any of the persons carrying on the enterprises which have or may have ceased to be distinct enterprises request him to provide the OFT with such information as the OFT may require for the purpose of deciding whether to make a reference under section 22.
- (2) The notice shall state –
  - (a) the information required;
  - (b) the period within which the information is to be provided; and
  - (c) the possible consequences of not providing the information within the stated period and in the authorised or required manner.

### **32 Supplementary provision for purposes of sections 25 and 31**

- (1) The Secretary of State may make regulations for the purposes of sections 25 and 31.
- (2) The regulations may, in particular –
  - (a) provide for the manner in which any information requested by the OFT under section 31 is authorised or required to be provided, and the time at which such information is to be treated as provided (including the time at which it is to be treated as provided to the satisfaction of the OFT for the purposes of section 25(3));

- (b) provide for the persons carrying on the enterprises which have or may have ceased to be distinct enterprises to be informed, in circumstances in which section 25(3) applies –
    - (i) of the fact that the OFT is satisfied as to the provision of the information requested by it or (as the case may be) of the OFT's decision to cancel the extension; and
    - (ii) of the time at which the OFT is to be treated as so satisfied or (as the case may be) of the time at which the cancellation is to be treated as having effect;
  - (c) provide for the persons carrying on the enterprises which have or may have ceased to be distinct enterprises to be informed, in circumstances in which section 25(5) applies –
    - (i) of the OFT's decision to cancel the extension; and
    - (ii) of the time at which the cancellation is to be treated as having effect;
  - (d) provide for the time at which any notice under section 25(4), (5)(b), (6) or (8) is to be treated as received;
  - (e) provide that a person is, or is not, to be treated, in such circumstances as may be specified in the regulations, as acting on behalf of a person carrying on an enterprise which has or may have ceased to be a distinct enterprise.
- (3) A notice under section 25(2) –
- (a) shall be given within 5 days of the end of the period within which the information is to be provided and which is stated in the notice under section 31; and
  - (b) shall inform the person to whom it is addressed of –
    - (i) the OFT's opinion as mentioned in section 25(2); and
    - (ii) the OFT's intention to extend the period for considering whether to make a reference.
- (4) In determining for the purposes of section 25(1) or (5)(b) or subsection (3)(a) above any period which is expressed in the enactment concerned as a period of days or number of days no account shall be taken of –
- (a) Saturday, Sunday, Good Friday and Christmas Day; and
  - (b) any day which is a bank holiday in England and Wales.

*Duty to make references: anticipated mergers*

**33 Duty to make references in relation to anticipated mergers**

- (1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that –
  - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (2) The OFT may decide not to make a reference under this section if it believes that –

- (a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission;
  - (b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Commission; or
  - (c) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.
- (3) No reference shall be made under this section if –
- (a) the making of the reference is prevented by section 69(1), 74(1) or 96(3) or paragraph 4 of Schedule 7;
  - (b) the OFT is considering whether to accept undertakings under section 73 instead of making such a reference;
  - (c) the arrangements concerned are being, or have been, dealt with in connection with a reference made under section 22;
  - (d) a notice under section 42(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the OFT under section 56(1); or
  - (e) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations, is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.
- (4) A reference under this section shall, in particular, specify –
- (a) the enactment under which it is made; and
  - (b) the date on which it is made.

### **34 Supplementary provision in relation to anticipated mergers**

- (1) The Secretary of State may by order make such provision as he considers appropriate about the operation of sections 27 and 29 in relation to –
- (a) references under this Part which relate to arrangements which are in progress or in contemplation; or
  - (b) notices under section 42(2), 59(2) or 67(2) which relate to such arrangements.
- (2) An order under subsection (1) may, in particular –
- (a) provide for sections 27(5) to (8) and 29 to apply with modifications in relation to such references or notices or in relation to particular descriptions of such references or notices;
  - (b) enable particular descriptions of events, arrangements or transactions which have already occurred –
    - (i) to be taken into account for the purposes of deciding whether to make such references or such references of a particular description or whether to give such notices or such notices of a particular description;

- (ii) to be dealt with under such references or such references of a particular description or under such notices or such notices of a particular description.

*Determination of references*

**35 Questions to be decided in relation to completed mergers**

- (1) Subject to subsections (6) and (7) and section 127(3), the Commission shall, on a reference under section 22, decide the following questions—
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that 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.
- (2) For the purposes of this Part there is an anti-competitive outcome if—
  - (a) a relevant merger situation has been created and the creation of that 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; or
  - (b) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation and the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (3) The Commission shall, if it has decided on a reference under section 22 that there is an anti-competitive outcome (within the meaning given by subsection (2)(a)), decide the following additional questions—
  - (a) whether action should be taken by it under section 41(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;
  - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (4) In deciding the questions mentioned in subsection (3) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (5) In deciding the questions mentioned in subsection (3) the Commission 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.
- (6) In relation to the question whether a relevant merger situation has been created, a reference under section 22 may be framed so as to require the Commission to exclude from consideration—
  - (a) subsection (1) of section 23;

- (b) subsection (2) of that section; or
  - (c) one of those subsections if the Commission finds that the other is satisfied.
- (7) In relation to the question whether any such result as is mentioned in section 23(2)(b) has arisen, a reference under section 22 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

### **36 Questions to be decided in relation to anticipated mergers**

- (1) Subject to subsections (5) and (6) and section 127(3), the Commission shall, on a reference under section 33, decide the following questions –
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
  - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- (2) The Commission shall, if it has decided on a reference under section 33 that there is an anti-competitive outcome (within the meaning given by section 35(2)(b)), decide the following additional questions –
- (a) whether action should be taken by it under section 41(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from the substantial lessening of competition;
  - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from the substantial lessening of competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (3) In deciding the questions mentioned in subsection (2) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (4) In deciding the questions mentioned in subsection (2) the Commission 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.
- (5) In relation to the question whether a relevant merger situation will be created, a reference under section 33 may be framed so as to require the Commission to exclude from consideration –
- (a) subsection (1) of section 23;
  - (b) subsection (2) of that section; or
  - (c) one of those subsections if the Commission finds that the other is satisfied.
- (6) In relation to the question whether any such result as is mentioned in section 23(2)(b) will arise, a reference under section 33 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

### **37 Cancellation and variation of references under section 22 or 33**

- (1) The Commission shall cancel a reference under section 33 if it considers that the proposal to make arrangements of the kind mentioned in the reference has been abandoned.
- (2) The Commission may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22; and, in such cases, references in this Part to references under those sections shall, so far as may be necessary, be construed accordingly.
- (3) Where, by virtue of subsection (2), the Commission treats a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22, sections 77 to 81 shall, in particular, apply as if the reference had been made under section 33 or (as the case may be) 22 instead of under section 22 or 33.
- (4) Subsection (5) applies in relation to any undertaking accepted under section 80, or any order made under section 81, which is in force immediately before the Commission, by virtue of subsection (2), treats a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22.
- (5) The undertaking or order shall, so far as applicable, continue in force as if –
  - (a) in the case of an undertaking or order which relates to a reference made under section 22, accepted or made in relation to a reference made under section 33; and
  - (b) in the case of an undertaking or order which relates to a reference made under section 33, accepted or made in relation to a reference made under section 22;and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.
- (6) The OFT may at any time vary a reference under section 22 or 33.
- (7) The OFT shall consult the Commission before varying any such reference.
- (8) Subsection (7) shall not apply if the Commission has requested the variation concerned.
- (9) No variation by the OFT under this section shall be capable of altering the period permitted by section 39 within which the report of the Commission under section 38 is to be prepared and published.

### **38 Investigations and reports on references under section 22 or 33**

- (1) The Commission shall prepare and publish a report on a reference under section 22 or 33 within the period permitted by section 39.
- (2) The report shall, in particular, contain –
  - (a) the decisions of the Commission on the questions which it is required to answer by virtue of section 35 or (as the case may be) 36;
  - (b) its reasons for its decisions; and
  - (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

- (3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.
- (4) The Commission shall, at the same time as a report prepared under this section is published, give it to the OFT.

### **39 Time-limits for investigations and reports**

- (1) The Commission shall prepare and publish its report under section 38 within the period of 24 weeks beginning with the date of the reference concerned.
- (2) Where article 9(6) of the European Merger Regulations applies in relation to the reference under section 22 or 33, the Commission shall prepare and publish its report under section 38—
  - (a) within the period of 24 weeks beginning with the date of the reference; or
  - (b) if it is a shorter period, within such period as is necessary to ensure compliance with that article.
- (3) The Commission may extend, by no more than 8 weeks, the period within which a report under section 38 is to be prepared and published if it considers that there are special reasons why the report cannot be prepared and published within that period.
- (4) The Commission may extend the period within which a report under section 38 is to be prepared and published if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 109.
- (5) In subsection (4) “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (6) For the purposes of subsection (5) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (7) An extension under subsection (3) or (4) shall come into force when published under section 107.
- (8) An extension under subsection (4) shall continue in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the Commission or (as the case may be) appears as a witness in accordance with the requirements of the Commission; or
  - (b) the Commission publishes its decision to cancel the extension.
- (9) References in this Part to the date of a reference shall be construed as references to the date specified in the reference as the date on which it is made.
- (10) This section is subject to section 40.



#### **40 Section 39: supplementary**

- (1) No extension is possible under subsection (3) or (4) of section 39 where the period within which the report is to be prepared and published is determined by virtue of subsection (2)(b) of that section.
- (2) Where the period within which the report is to be prepared and published is determined by virtue of subsection (2)(a) of section 39, no extension is possible under subsection (3) or (4) of that section which extends that period beyond such period as is necessary to ensure compliance with article 9(6) of the European Merger Regulations.
- (3) A period extended under subsection (3) of section 39 may also be extended under subsection (4) of that section and a period extended under subsection (4) of that section may also be extended under subsection (3) of that section.
- (4) No more than one extension is possible under section 39(3).
- (5) Where a period within which a report under section 38 is to be prepared and published is extended or further extended under section 39(3) or (4), the period as extended or (as the case may be) further extended shall, subject to subsections (6) and (7), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (6) Subsection (7) applies where—
  - (a) the period within which the report under section 38 is to be prepared and published is further extended;
  - (b) the further extension and at least one previous extension is made under section 39(4); and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.
- (8) The Secretary of State may by order amend section 39 so as to alter any one or more of the following periods—
  - (a) the period of 24 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) the period of 24 weeks mentioned in subsection (2)(a) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (c) the period of 8 weeks mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period.
- (9) No alteration shall be made by virtue of subsection (8) which results in the period for the time being mentioned in subsection (1) or (2)(a) of section 39 exceeding 24 weeks or the period for the time being mentioned in subsection (3) of that section exceeding 8 weeks.
- (10) An order under subsection (8) shall not affect any period of time within which the Commission is under a duty to prepare and publish its report under section

- 38 in relation to a reference under section 22 or 33 if the Commission is already under that duty in relation to that reference when the order is made.
- (11) Before making an order under subsection (8) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.
- (12) The Secretary of State may make regulations for the purposes of section 39(8).
- (13) The regulations may, in particular –
- (a) provide for the time at which information or documents are to be treated as provided (including the time at which they are to be treated as provided to the satisfaction of the Commission for the purposes of section 39(8));
  - (b) provide for the time at which a person is to be treated as appearing as a witness (including the time at which he is to be treated as appearing as a witness in accordance with the requirements of the Commission for the purposes of section 39(8));
  - (c) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 39(8) applies, of the fact that –
    - (i) the Commission is satisfied as to the provision of the information or documents required by it; or
    - (ii) the person concerned has appeared as a witness in accordance with the requirements of the Commission;
  - (d) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 39(8) applies, of the time at which the Commission is to be treated as satisfied as mentioned in paragraph (c)(i) above or the person concerned is to be treated as having appeared as mentioned in paragraph (c)(ii) above.

#### **41 Duty to remedy effects of completed or anticipated mergers**

- (1) Subsection (2) applies where a report of the Commission has been prepared and published under section 38 within the period permitted by section 39 and contains the decision that there is an anti-competitive outcome.
- (2) The Commission shall take such action under section 82 or 84 as it considers to be reasonable and practicable –
- (a) to remedy, mitigate or prevent the substantial lessening of competition concerned; and
  - (b) to remedy, mitigate or prevent any adverse effects which have resulted from, or may be expected to result from, the substantial lessening of competition.
- (3) The decision of the Commission under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 35(3) or (as the case may be) 36(2) unless there has been a material change of circumstances since the preparation of the report or the Commission otherwise has a special reason for deciding differently.
- (4) In making a decision under subsection (2), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

- (5) In making a decision under subsection (2), the Commission 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.

## CHAPTER 2

### PUBLIC INTEREST CASES

#### *Power to make references*

#### **42 Intervention by Secretary of State in certain public interest cases**

- (1) Subsection (2) applies where—
- (a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) no reference under section 22 or 33 has been made in relation to the relevant merger situation concerned;
  - (c) no decision has been made not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33 or a decision to accept undertakings under section 73 instead of making such a reference); and
  - (d) no reference is prevented from being made under section 22 or 33 by virtue of—
    - (i) section 22(3)(a) or (e) or (as the case may be) 33(3)(a) or (e); or
    - (ii) Community law or anything done under or in accordance with it.
- (2) The Secretary of State may give a notice to the OFT (in this Part “an intervention notice”) if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.
- (3) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 58 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.
- (4) No more than one intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.
- (5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).
- (6) In their application by virtue of subsection (5) sections 23 to 32 shall have effect as if—
- (a) for paragraph (a) of section 23(9) there were substituted—
    - “(a) in relation to the giving of an intervention notice, the time when the notice is given;

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- (aa) in relation to the making of a report by the OFT under section 44, the time of the making of the report;
  - (ab) in the case of a reference which is treated as having been made under section 45(2) or (3) by virtue of section 49(1), such time as the Commission may determine; and”;
  - (b) the references to the OFT in sections 25(1) to (3), (6) and (8) and 31 included references to the Secretary of State;
  - (c) the references to the OFT in section 25(4) and (5) were references to the Secretary of State;
  - (d) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;
  - (e) after section 25(5) there were inserted –
    - “(5A) The Secretary of State may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if, by virtue of section 46(5) or paragraph 3(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 45.
    - (5B) An extension under subsection (5A) shall be for the period of the delay.”;
  - (f) in section 25(10)(b) after the word “(4)” there were inserted “, (5A)”;
  - (g) the reference in section 25(12) to one extension were a reference to one extension by the OFT and one extension by the Secretary of State;
  - (h) the powers to extend time-limits under section 25 as applied by subsection (5) above, and the power to request information under section 31(1) as so applied, were not exercisable by the OFT or the Secretary of State before the giving of an intervention notice but the existing time-limits in relation to possible references under section 22 or 33 were applicable for the purposes of the giving of that notice;
  - (i) the existing time-limits in relation to possible references under section 22 or 33 (except for extensions under section 25(4)) remained applicable on and after the giving of an intervention notice as if any extensions were made under section 25 as applied by subsection (5) above but subject to further alteration by the OFT or the Secretary of State under section 25 as so applied;
  - (j) in subsection (1) of section 31 for the words “section 22” there were substituted “section 45(2) or (3)” and, in the application of that subsection to the OFT, for the word “deciding” there were substituted “enabling the Secretary of State to decide”;
  - (k) in the case of the giving of intervention notices, the references in sections 23 to 32 to the making of a reference or a reference were, so far as necessary, references to the giving of an intervention notice or an intervention notice; and
  - (l) the references to the OFT in section 32(2)(a) to (c) and (3) were construed in accordance with the above modifications.
- (7) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.
- (8) For the purposes of this Part a public interest consideration is finalised if –

- (a) it is specified in section 58 otherwise than by virtue of an order under subsection (3) of that section; or
- (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (7) of section 124 and within the period mentioned in that subsection.

#### **43 Intervention notices under section 42**

- (1) An intervention notice shall state—
  - (a) the relevant merger situation concerned;
  - (b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and
  - (c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (3) An intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.
- (4) For the purposes of this Part, a matter to which an intervention notice relates is finally determined under this Chapter if—
  - (a) the time within which the OFT is to report to the Secretary of State under section 44 has expired and no such report has been made;
  - (b) the Secretary of State decides to accept an undertaking or group of undertakings under paragraph 3 of Schedule 7 instead of making a reference under section 45;
  - (c) the Secretary of State otherwise decides not to make a reference under that section;
  - (d) the Commission cancels such a reference under section 48(1) or 53(1);
  - (e) the time within which the Commission is to prepare a report under section 50 and give it to the Secretary of State has expired and no such report has been prepared and given to the Secretary of State;
  - (f) 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;
  - (g) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
  - (h) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
  - (i) 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 Schedule 7 nor to make an order under paragraph 11 of that Schedule; or
  - (j) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of Schedule 7 or makes an order under paragraph 11 of that Schedule.

- (5) For the purposes of this Part the time when a matter to which an intervention notice relates is finally determined under this Chapter is –
- (a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;
  - (b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;
  - (c) in a case falling within subsection (4)(c), (d), (g) or (h), the making of the decision concerned;
  - (d) in a case falling within subsection (4)(i), the making of the decision neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; and
  - (e) in a case falling within subsection (4)(j), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

#### **44 Investigation and report by OFT**

- (1) Subsection (2) applies where the Secretary of State has given an intervention notice in relation to a relevant merger situation.
- (2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.
- (3) The report shall contain –
- (a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State’s decision as to whether to make a reference under section 45; and
  - (b) a summary of any representations about the case which have been received by the OFT and which relate to any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 45.
- (4) The report shall, in particular, include decisions as to whether the OFT believes that it is, or may be, the case that –
- (a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) the creation of that 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;
  - (c) the market or markets concerned would not be of sufficient importance to justify the making of a reference to the Commission under section 22 or 33;
  - (d) in the case of arrangements which are in progress or in contemplation, the arrangements are not sufficiently far advanced, or not sufficiently likely to proceed, to justify the making of such a reference;
  - (e) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition; or

- (f) it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7.
- (5) If the OFT believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7, the report shall contain descriptions of the undertakings which the OFT believes are, or may be, appropriate.
- (6) The report may, in particular, include advice and recommendations on any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.
- (7) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

#### **45 Power of Secretary of State to refer matter to Commission**

- (1) Subsections (2) to (5) apply where the Secretary of State—
  - (a) has given an intervention notice in relation to a relevant merger situation; and
  - (b) has received a report of the OFT under section 44 in relation to the matter.
- (2) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—
  - (a) a relevant merger situation has been created;
  - (b) the creation of that 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;
  - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
  - (d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (3) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—
  - (a) a relevant merger situation has been created;
  - (b) the creation of that situation has not resulted, and may be expected not to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
  - (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (4) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
  - (d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.
- (5) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that –
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) the creation of that situation may be expected not to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;
  - (c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
  - (d) taking account only of the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.
- (6) For the purposes of this Chapter any anti-competitive outcome shall be treated as being adverse to the public interest unless it is justified by one or more than one public interest consideration which is relevant.
- (7) This section is subject to section 46.

#### **46 References under section 45: supplementary**

- (1) No reference shall be made under section 45 if –
- (a) the making of the reference is prevented by section 69(1), 74(1) or 96(3) or paragraph 4 of Schedule 7; or
  - (b) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations, is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.
- (2) The Secretary of State, in deciding whether to make a reference under section 45, shall accept the decisions of the OFT included in its report by virtue of subsection (4) of section 44 and any descriptions of undertakings as mentioned in subsection (5) of that section.
- (3) Where the decision to make a reference under section 45 is made at any time on or after the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised before the end of that period.



- (4) Subject to subsection (5), where the decision to make a reference under section 45(2) or (4) is made at any time before the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised if its effect would be to prevent, or to help to prevent, an anti-competitive outcome from being adverse to the public interest.
- (5) The Secretary of State may, if he believes that there is a realistic prospect of the public interest consideration mentioned in subsection (4) being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned, delay deciding whether to make the reference concerned until the public interest consideration is finalised or, if earlier, the period expires.
- (6) A reference under section 45 shall, in particular, specify –
  - (a) the subsection of that section under which it is made;
  - (b) the date on which it is made; and
  - (c) the public interest consideration or considerations mentioned in the intervention notice concerned which the Secretary of State is not under a duty to disregard by virtue of subsection (3) above and which he believes are or may be relevant to a consideration of the relevant merger situation concerned.

*Reports on references*

**47 Questions to be decided on references under section 45**

- (1) The Commission shall, on a reference under section 45(2) or (3), decide whether a relevant merger situation has been created.
- (2) If the Commission decides that such a situation has been created, it shall, on a reference under section 45(2), decide the following additional questions –
  - (a) whether the creation of that 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; and
  - (b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (3) If the Commission decides that a relevant merger situation has been created, it shall, on a reference under section 45(3), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (4) The Commission shall, on a reference under section 45(4) or (5), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- (5) If the Commission decides that such arrangements are in progress or in contemplation, it shall, on a reference under section 45(4), decide the following additional questions –

- (a) whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; and
  - (b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.
- (6) If the Commission decides that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it shall, on a reference under section 45(5), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.
- (7) The Commission shall, if it has decided on a reference under section 45 that the creation of a relevant merger situation operates or may be expected to operate against the public interest, decide the following additional questions –
  - (a) whether action should be taken by the Secretary of State under section 55 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation;
  - (b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (8) Where the Commission has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, it shall also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 56(6)) –
  - (a) whether action should be taken by it under section 41 for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;
  - (b) whether the Commission should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (9) In deciding the questions mentioned in subsections (7) and (8) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to –
  - (a) the adverse effects to the public interest; or
  - (b) (as the case may be) the substantial lessening of competition and any adverse effects resulting from it.

- (10) In deciding the questions mentioned in subsections (7) and (8) in a case where it has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition, the Commission 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.
- (11) In this section “admissible public interest consideration” means any public interest consideration which is specified in the reference under section 45 and which the Commission is not under a duty to disregard.

#### **48 Cases where references or certain questions need not be decided**

- (1) The Commission shall cancel a reference under section 45(4) or (5) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.
- (2) In relation to the question whether a relevant merger situation has been created or the question whether a relevant merger situation will be created, a reference under section 45 may be framed so as to require the Commission to exclude from consideration—
  - (a) subsection (1) of section 23;
  - (b) subsection (2) of that section; or
  - (c) one of those subsections if the Commission finds that the other is satisfied.
- (3) In relation to the question whether any such result as is mentioned in section 23(2)(b) has arisen or the question whether any such result will arise, a reference under section 45 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

#### **49 Variation of references under section 45**

- (1) The Commission may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat—
  - (a) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
  - (b) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;

and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.

- (2) Where, by virtue of subsection (1), the Commission treats a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section, paragraphs 1, 2, 7 and 8 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (4) or (as the case may be) (5) of that section instead of under subsection (2) or (3) of that section.
- (3) Where, by virtue of subsection (1), the Commission treats a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section, paragraphs 1, 2, 7 and 8 of

Schedule 7 shall, in particular, apply as if the reference had been made under subsection (2) or (as the case may be) (3) of that section instead of under subsection (4) or (5) of that section.

- (4) Subsection (5) applies in relation to any undertaking accepted under paragraph 1 of Schedule 7, or any order made under paragraph 2 of that Schedule, which is in force immediately before the Commission, by virtue of subsection (1), treats a reference as mentioned in subsection (1).
- (5) The undertaking or order shall, so far as applicable, continue in force as if –
  - (a) in the case of an undertaking or order which relates to a reference under subsection (2) or (3) of section 45, accepted or made in relation to a reference made under subsection (4) or (as the case may be) (5) of that section; and
  - (b) in the case of an undertaking or order which relates to a reference made under subsection (4) or (5) of that section, accepted or made in relation to a reference made under subsection (2) or (as the case may be) (3) of that section;and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.
- (6) The Secretary of State may at any time vary a reference under section 45.
- (7) The Secretary of State shall consult the Commission before varying any such reference.
- (8) Subsection (7) shall not apply if the Commission has requested the variation concerned.
- (9) No variation by the Secretary of State under this section shall be capable of altering the public interest consideration or considerations specified in the reference or the period permitted by section 51 within which the report of the Commission under section 50 is to be prepared and given to the Secretary of State.

#### **50 Investigations and reports on references under section 45**

- (1) The Commission shall prepare a report on a reference under section 45 and give it to the Secretary of State within the period permitted by section 51.
- (2) The report shall, in particular, contain –
  - (a) the decisions of the Commission on the questions which it is required to answer by virtue of section 47;
  - (b) its reasons for its decisions; and
  - (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (3) The Commission shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

#### **51 Time-limits for investigations and reports by Commission**

- (1) The Commission shall prepare its report under section 50 and give it to the Secretary of State under that section within the period of 24 weeks beginning with the date of the reference concerned.

- (2) Where article 9(6) of the European Merger Regulations applies in relation to the reference under section 45, the Commission shall prepare its report under section 50 and give it to the Secretary of State—
  - (a) within the period of 24 weeks beginning with the date of the reference; or
  - (b) if it is a shorter period, within such period as is necessary to ensure compliance with that article.
- (3) The Commission may extend, by no more than 8 weeks, the period within which a report under section 50 is to be prepared and given to the Secretary of State if it considers that there are special reasons why the report cannot be prepared and given to the Secretary of State within that period.
- (4) The Commission may extend the period within which a report under section 50 is to be prepared and given to the Secretary of State if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 109.
- (5) In subsection (4) “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (6) For the purposes of subsection (5) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (7) An extension under subsection (3) or (4) shall come into force when published under section 107.
- (8) An extension under subsection (4) shall continue in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the Commission or (as the case may be) appears as a witness in accordance with the requirements of the Commission; or
  - (b) the Commission publishes its decision to cancel the extension.
- (9) This section is subject to sections 52 and 53.

## **52 Section 51: supplementary**

- (1) No extension is possible under subsection (3) or (4) of section 51 where the period within which the report is to be prepared and given to the Secretary of State is determined by virtue of subsection (2)(b) of that section.
- (2) Where the period within which the report is to be prepared and given to the Secretary of State is determined by virtue of subsection (2)(a) of section 51, no extension is possible under subsection (3) or (4) of that section which extends that period beyond such period as is necessary to ensure compliance with article 9(6) of the European Merger Regulations.
- (3) A period extended under subsection (3) of section 51 may also be extended under subsection (4) of that section and a period extended under subsection (4) of that section may also be extended under subsection (3) of that section.

- (4) No more than one extension is possible under section 51(3).
- (5) Where a period within which a report under section 50 is to be prepared and given to the Secretary of State is extended or further extended under section 51(3) or (4), the period as extended or (as the case may be) further extended shall, subject to subsections (6) and (7), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (6) Subsection (7) applies where—
  - (a) the period within which the report under section 50 is to be prepared and given to the Secretary of State is further extended;
  - (b) the further extension and at least one previous extension is made under section 51(4); and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.
- (8) The Secretary of State may by order amend section 51 so as to alter any one or more of the following periods—
  - (a) the period of 24 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) the period of 24 weeks mentioned in subsection (2)(a) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (c) the period of 8 weeks mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period.
- (9) No alteration shall be made by virtue of subsection (8) which results in the period for the time being mentioned in subsection (1) or (2)(a) of section 51 exceeding 24 weeks or the period for the time being mentioned in subsection (3) of that section exceeding 8 weeks.
- (10) An order under subsection (8) shall not affect any period of time within which the Commission is under a duty to prepare and give to the Secretary of State its report under section 50 in relation to a reference under section 45 if the Commission is already under that duty in relation to that reference when the order is made.
- (11) Before making an order under subsection (8) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.
- (12) The Secretary of State may make regulations for the purposes of section 51(8).
- (13) The regulations may, in particular—
  - (a) provide for the time at which information or documents are to be treated as provided (including the time at which they are to be treated as provided to the satisfaction of the Commission for the purposes of section 51(8));
  - (b) provide for the time at which a person is to be treated as appearing as a witness (including the time at which he is to be treated as appearing

- as a witness in accordance with the requirements of the Commission for the purposes of section 51(8));
- (c) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 51(8) applies, of the fact that –
    - (i) the Commission is satisfied as to the provision of the information or documents required by it; or
    - (ii) the person concerned has appeared as a witness in accordance with the requirements of the Commission;
  - (d) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 51(8) applies, of the time at which the Commission is to be treated as satisfied as mentioned in paragraph (c)(i) above or the person concerned is to be treated as having appeared as mentioned in paragraph (c)(ii) above.

### **53 Restrictions on action where public interest considerations not finalised**

- (1) The Commission shall cancel a reference under section 45 if –
  - (a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
  - (b) no other public interest consideration is mentioned in the notice;
  - (c) at least 24 weeks has elapsed since the giving of the notice; and
  - (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.
- (2) Where a reference to the Commission under section 45 specifies a public interest consideration which has not been finalised before the making of the reference, the Commission shall not give its report to the Secretary of State under section 50 in relation to that reference unless –
  - (a) the period of 24 weeks beginning with the giving of the intervention notice concerned has expired;
  - (b) the public interest consideration concerned has been finalised; or
  - (c) the report must be given to the Secretary of State to ensure compliance with article 9(6) of the European Merger Regulations.
- (3) The Commission shall, in reporting on any of the questions mentioned in section 47(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which has not been finalised before the giving of the report.
- (4) The Commission shall, in reporting on any of the questions mentioned in section 47(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.
- (5) Subsections (1) to (4) are without prejudice to the power of the Commission to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

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*Decisions of the Secretary of State*

**54 Decision of Secretary of State in public interest cases**

- (1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 50 in relation to a relevant merger situation.
- (2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the relevant merger situation and whether to make no finding at all in the matter.
- (3) For the purposes of this Part the Secretary of State makes an adverse public interest finding in relation to a relevant merger situation if, in relation to that situation, he decides –
  - (a) in connection with a reference to the Commission under subsection (2) of section 45, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (3) of that section;
  - (b) in connection with a reference to the Commission under subsection (3) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection;
  - (c) in connection with a reference to the Commission under subsection (4) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (5) of that section; and
  - (d) in connection with a reference to the Commission under subsection (5) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection.
- (4) The Secretary of State may make no finding at all in the matter only if he decides that there is no public interest consideration which is relevant to a consideration of the relevant merger situation concerned.
- (5) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the Commission under section 50.
- (6) In making a decision under subsections (2) to (4), the Secretary of State shall disregard any public interest consideration not specified in the reference under section 45 and any public interest consideration disregarded by the Commission for the purposes of its report.
- (7) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept –
  - (a) in connection with a reference to the Commission under section 45(2) or (4), the decision of the report of the Commission under section 50 as to whether there is an anti-competitive outcome; and
  - (b) in connection with a reference to the Commission under section 45(3) or (5) –
    - (i) the decision of the report of the Commission under section 50 as to whether a relevant merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
    - (ii) the decision of the report of the OFT under section 44 as to the absence of a substantial lessening of competition.



- (8) In determining for the purposes of subsection (5) the period of 30 days no account shall be taken of –
  - (a) Saturday, Sunday, Good Friday and Christmas Day; and
  - (b) any day which is a bank holiday in England and Wales.

## **55 Enforcement action by Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has decided under subsection (2) of section 54 within the period required by subsection (5) of that section to make an adverse public interest finding in relation to a relevant merger situation and has published his decision within the period so required.
- (2) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation concerned.
- (3) In making a decision under subsection (2) the Secretary of State shall, in particular, have regard to the report of the Commission under section 50.
- (4) In making a decision under subsection (2) in any case of a substantial lessening of competition, 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.

### *Other*

## **56 Competition cases where intervention on public interest grounds ceases**

- (1) Where the Secretary of State decides not to make a reference under section 45 on the ground that no public interest consideration to which he is able to have regard is relevant to a consideration of the relevant merger situation concerned, he shall by notice require the OFT to deal with the matter otherwise than under this Chapter.
- (2) Where a notice is given to the OFT in the circumstances mentioned in subsection (1), the OFT shall decide whether to make a reference under section 22 or 33; and any time-limits in relation to the Secretary of State's decision whether to make a reference under section 45 (including any remaining powers of extension) shall apply in relation to the decision of the OFT whether to make a reference under section 22 or 33.
- (3) Where the Commission cancels under section 53(1) a reference under section 45 and the report of the OFT under section 44 contains the decision that it is or may be the case that there is an anti-competitive outcome in relation to the relevant merger situation concerned, the Commission shall proceed under this Part as if a reference under section 22 or (as the case may be) 33 had been made to it by the OFT.
- (4) In proceeding by virtue of subsection (3) to prepare and publish a report under section 38, the Commission shall proceed as if –
  - (a) the reference under section 22 or 33 had been made at the same time as the reference under section 45;
  - (b) the timetable for preparing and giving its report under section 50 (including any remaining powers of extension and as extended by an

additional period of 20 days) were the timetable for preparing and publishing its report under section 38; and

- (c) in relation to the question whether a relevant merger situation has been created or the question whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, the Commission were confined to the questions on the subject to be investigated by it under section 47.
- (5) In determining the period of 20 days mentioned in subsection (4) no account shall be taken of –
    - (a) Saturday, Sunday, Good Friday and Christmas Day; and
    - (b) any day which is a bank holiday in England and Wales.
  - (6) Where the Secretary of State decides under section 54(2) to make no finding at all in the matter in connection with a reference under section 45(2) or (4), the Commission shall proceed under this Part as if a reference under section 22 or (as the case may be) 33 had been made to it instead of a reference under section 45 and as if its report to the Secretary of State under section 50 had been prepared and published by it under section 38 within the period permitted by section 39.
  - (7) In relation to proceedings by virtue of subsection (6), the reference in section 41(3) to decisions of the Commission as included in its report by virtue of section 35(3) or 36(2) shall be construed as a reference to decisions which were included in the report of the Commission by virtue of section 47(8).
  - (8) Where the Commission becomes under a duty to proceed as mentioned in subsection (3) or (6), references in this Part to references under sections 22 and 33 shall, so far as may be necessary, be construed accordingly; and, in particular, sections 77 to 81 shall apply as if a reference has been made to the Commission by the OFT under section 22 or (as the case may be) 33.

## **57 Duties of OFT and Commission to inform Secretary of State**

- (1) The OFT shall, in considering whether to make a reference under section 22 or 33, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 58 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.
- (2) The OFT and the Commission shall bring to the attention of the Secretary of State any representations about exercising his powers under section 58(3) which have been made to the OFT or (as the case may be) the Commission.

## **58 Specified considerations**

- (1) The interests of national security are specified in this section.
- (2) In subsection (1) “national security” includes public security; and in this subsection “public security” has the same meaning as in article 21(3) of the European Merger Regulations.
- (3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.
- (4) An order under this section may, in particular –

- (a) provide for a consideration to be specified in this section for a particular purpose or purposes or for all purposes;
- (b) apply in relation to cases under consideration by the OFT, the Commission or the Secretary of State before the making of the order as well as cases under consideration on or after the making of the order.

### CHAPTER 3

#### OTHER SPECIAL CASES

##### *Special public interest cases*

#### **59 Intervention by Secretary of State in special public interest cases**

- (1) Subsection (2) applies where the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (2) The Secretary of State may give a notice to the OFT (in this Part “a special intervention notice”) if he believes that it is or may be the case that one or more than one consideration specified in section 58 is relevant to a consideration of the special merger situation concerned.
- (3) For the purposes of this Part a special merger situation has been created if—
  - (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but
  - (b) a relevant merger situation would have been created if those enactments were disregarded;and the conditions mentioned in subsection (4) are satisfied.
- (4) The conditions mentioned in this subsection are that, immediately before the enterprises concerned ceased to be distinct—
  - (a) at least one of the enterprises concerned was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom; and
  - (b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.
- (5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).
- (6) In their application by virtue of subsection (5) sections 23 to 32 shall have effect as if—
  - (a) for paragraph (a) of section 23(9) there were substituted—
    - “(a) in relation to the giving of a special intervention notice, the time when the notice is given;
    - (aa) in relation to the making of a report by the OFT under section 61, the time of the making of the report;

- 
- (ab) in the case of a reference which is treated as having been made under section 62(2) by virtue of section 64(2), such time as the Commission may determine; and”;
  - (b) the references to the OFT in section 24(2)(a) and (b) included references to the Secretary of State;
  - (c) the references to the OFT in sections 25(1) to (3), (6) and (8) and 31 included references to the Secretary of State;
  - (d) the references to the OFT in section 25(4) and (5) were references to the Secretary of State;
  - (e) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;
  - (f) the reference in section 25(12) to one extension were a reference to one extension by the OFT and one extension by the Secretary of State;
  - (g) the powers to extend time-limits under section 25 as applied by subsection (5) above, and the power to request information under section 31(1) as so applied, were not exercisable by the OFT or the Secretary of State before the giving of a special intervention notice;
  - (h) in subsection (1) of section 31 for the words “section 22” there were substituted “section 62(2)” and, in the application of that subsection to the OFT, for the word “deciding” there were substituted “enabling the Secretary of State to decide”;
  - (i) in the case of the giving of special intervention notices, the references in sections 23 to 32 to the making of a reference or a reference were, so far as necessary, references to the giving of a special intervention notice or a special intervention notice; and
  - (j) the references to the OFT in section 32(2)(a) to (c) and (3) were construed in accordance with the above modifications.
- (7) No more than one special intervention notice shall be given under subsection (2) in relation to the same special merger situation.
- (8) In this section “relevant government contractor” means –
- (a) a government contractor –
    - (i) who has been notified by or on behalf of the Secretary of State of information, documents or other articles relating to defence and of a confidential nature which the government contractor or an employee of his may hold or receive in connection with being such a contractor; and
    - (ii) whose notification has not been revoked by or on behalf of the Secretary of State; or
  - (b) a former government contractor who was so notified when he was a government contractor and whose notification has not been revoked by or on behalf of the Secretary of State.
- (9) In this section –
- “defence” has the same meaning as in section 2 of the Official Secrets Act 1989 (c. 6); and
  - “government contractor” has the same meaning as in the Act of 1989 and includes any sub-contractor of a government contractor, any sub-contractor of that sub-contractor and any other sub-contractor in a chain of sub-contractors which begins with the sub-contractor of the government contractor.

## 60 Special intervention notices under section 59

- (1) A special intervention notice shall state—
  - (a) the special merger situation concerned; and
  - (b) the consideration specified in section 58 or considerations so specified which are, or may be, relevant to the special merger situation concerned.
- (2) Where the Secretary of State believes that it is or may be the case that two or more considerations specified in section 58 are relevant to a consideration of the special merger situation concerned, he may decide not to mention in the special intervention notice such of those considerations as he considers appropriate.
- (3) A special intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.
- (4) For the purposes of this Part, a matter to which a special intervention notice relates is finally determined under this Chapter if—
  - (a) the time within which the OFT is to report to the Secretary of State under section 61 has expired and no such report has been made;
  - (b) the Secretary of State decides to accept an undertaking or group of undertakings under paragraph 3 of Schedule 7 instead of making a reference under section 62;
  - (c) the Secretary of State otherwise decides not to make a reference under that section;
  - (d) the Commission cancels such a reference under section 64(1);
  - (e) the time within which the Commission is to prepare a report under section 65 and give it to the Secretary of State has expired and no such report has been prepared and given to the Secretary of State;
  - (f) 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;
  - (g) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;
  - (h) 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 Schedule 7 nor to make an order under paragraph 11 of that Schedule; or
  - (i) 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 Schedule 7 or makes an order under paragraph 11 of that Schedule.
- (5) For the purposes of this Part the time when a matter to which a special intervention notice relates is finally determined under this Chapter is—
  - (a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;
  - (b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;
  - (c) in a case falling within subsection (4)(c), (d) or (g), the making of the decision concerned;

- (d) in a case falling within subsection (4)(h), the making of the decision neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; and
- (e) in a case falling within subsection (4)(i), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

## **61 Initial investigation and report by OFT**

- (1) Subsection (2) applies where the Secretary of State has given a special intervention notice in relation to a special merger situation.
- (2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.
- (3) The report shall contain –
  - (a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State’s decision as to whether to make a reference under section 62; and
  - (b) a summary of any representations about the case which have been received by the OFT and which relate to any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62.
- (4) The report shall include a decision as to whether the OFT believes (disregarding section 59(4)(b)) that it is, or may be, the case that a special merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (5) The report may, in particular, include advice and recommendations on any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62.
- (6) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

## **62 Power of Secretary of State to refer the matter**

- (1) Subsection (2) applies where the Secretary of State –
  - (a) has given a special intervention notice in relation to a special merger situation; and
  - (b) has received a report of the OFT under section 61 in relation to the matter.
- (2) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that –
  - (a) a special merger situation has been created;
  - (b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and

- (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.
- (3) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that –
  - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;
  - (b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
  - (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.
- (4) No reference shall be made under this section if the making of the reference is prevented by section 69(1) or paragraph 4 of Schedule 7.
- (5) The Secretary of State, in deciding whether to make a reference under this section, shall accept the decision of the OFT included in its report under section 61 by virtue of subsection (4) of that section.
- (6) A reference under this section shall, in particular, specify –
  - (a) the subsection of this section under which it is made;
  - (b) the date on which it is made; and
  - (c) the consideration or considerations mentioned in the special intervention notice which the Secretary of State believes are, or may be, relevant to a consideration of the special merger situation concerned.

### **63 Questions to be decided on references under section 62**

- (1) The Commission shall, on a reference under section 62(2), decide whether a special merger situation has been created.
- (2) The Commission shall, on a reference under section 62(3), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (3) If the Commission decides that a special merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it shall, on a reference under section 62, decide whether, taking account only of the consideration or considerations mentioned in the reference, the creation of that situation operates or may be expected to operate against the public interest.
- (4) The Commission shall, if it has decided on a reference under section 62 that the creation of a special merger situation operates or may be expected to operate against the public interest, decide the following additional questions –
  - (a) whether action should be taken by the Secretary of State under section 66 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned;
  - (b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or

preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned; and

- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

#### **64 Cancellation and variation of references under section 62**

- (1) The Commission shall cancel a reference under section 62(3) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.
- (2) The Commission may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section; and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.
- (3) Where, by virtue of subsection (2), the Commission treats a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section, paragraphs 1, 2, 7 and 8 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (3) or (as the case may be) (2) of that section instead of under subsection (2) or (3) of that section.
- (4) Subsection (5) applies in relation to any undertaking accepted under paragraph 1 of Schedule 7, or any order made under paragraph 2 of that Schedule, which is in force immediately before the Commission, by virtue of subsection (2), treats a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section.
- (5) The undertaking or order shall, so far as applicable, continue in force as if –
  - (a) in the case of an undertaking or order which relates to a reference under subsection (2) of section 62, accepted or made in relation to a reference made under subsection (3) of that section; and
  - (b) in the case of an undertaking or order which relates to a reference made under subsection (3) of that section, accepted or made in relation to a reference made under subsection (2) of that section;and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.
- (6) The Secretary of State may at any time vary a reference under section 62.
- (7) The Secretary of State shall consult the Commission before varying any such reference.
- (8) Subsection (7) shall not apply if the Commission has requested the variation concerned.
- (9) No variation by the Secretary of State under this section shall be capable of altering the consideration or considerations specified in the reference or the period permitted by virtue of section 65 within which the report of the Commission under that section is to be prepared and given to the Secretary of State.



## **65 Investigations and reports on references under section 62**

- (1) The Commission shall prepare a report on a reference under section 62 and give it to the Secretary of State within the period permitted by virtue of this section.
- (2) The report shall, in particular, contain—
  - (a) the decisions of the Commission on the questions which it is required to answer by virtue of section 63;
  - (b) its reasons for its decisions; and
  - (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (3) Sections 51 and 52 (but not section 53) shall apply for the purposes of a report under this section as they apply for the purposes of a report under section 50.
- (4) The Commission shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

## **66 Decision and enforcement action by Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 65 in relation to a special merger situation.
- (2) The Secretary of State shall, in connection with a reference under section 62(2) or (3), decide the questions which the Commission is required to decide by virtue of section 63(1) to (3).
- (3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the Commission under section 65; and subsection (8) of section 54 shall apply for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.
- (4) In making his decisions under subsection (2), the Secretary of State shall accept the decisions of the report of the Commission under section 65 as to whether a special merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.
- (5) Subsection (6) applies where the Secretary of State has decided under subsection (2) that—
  - (a) a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;
  - (b) at least one consideration which is mentioned in the special intervention notice concerned is relevant to a consideration of the special merger situation concerned; and
  - (c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest;and has so decided, and published his decision, within the period required by subsection (3).
- (6) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate

or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned.

- (7) In making a decision under subsection (6), the Secretary of State shall, in particular, have regard to the report of the Commission under section 65.

### *European mergers*

## **67 Intervention to protect legitimate interests**

- (1) Subsection (2) applies where—
- (a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that—
    - (i) a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
    - (ii) a concentration with a Community dimension (within the meaning of the European Merger Regulations), or a part of such a concentration, has thereby arisen or will thereby arise;
  - (b) a reference which would otherwise be possible under section 22 or 33 is prevented from being made under that section in relation to the relevant merger situation concerned by virtue of Community law or anything done under or in accordance with it; and
  - (c) the Secretary of State is considering whether to take appropriate measures to protect legitimate interests as permitted by article 21(3) of the European Merger Regulations.
- (2) The Secretary of State may give a notice to the OFT (in this section “a European intervention notice”) if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.
- (3) A European intervention notice shall state—
- (a) the relevant merger situation concerned;
  - (b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and
  - (c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (4) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (5) No more than one European intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.
- (6) Where the Secretary of State has given a European intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

- (7) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this section as they do for the purposes of Chapter 1 but subject to subsection (8).
- (8) In their application by virtue of subsection (7) sections 23 to 32 shall have effect as if –
  - (a) references in those sections to the decision-making authority were references to the Secretary of State;
  - (b) for paragraphs (a) and (b) of section 23(9) there were substituted “, in relation to the giving of a European intervention notice, the time when the notice is given”;
  - (c) the references to the OFT in section 24(2)(a) and (b) included references to the Secretary of State;
  - (d) sections 25, 31 and 32 were omitted; and
  - (e) the references in sections 23 to 29 to the making of a reference or a reference were, so far as necessary, references to the giving of a European intervention notice or a European intervention notice.
- (9) Section 42(3) shall, in its application to this section and section 68, have effect as if for the words “intervention notice” there were substituted “European intervention notice”.

## **68 Scheme for protecting legitimate interests**

- (1) The Secretary of State may by order provide for the taking of action, where a European intervention notice has been given, to remedy, mitigate or prevent effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of a European relevant merger situation.
- (2) In subsection (1) “European relevant merger situation” means a relevant merger situation –
  - (a) which has been created or will be created if arrangements which are in progress or in contemplation are carried into effect;
  - (b) by virtue of which a concentration with a Community dimension (within the meaning of the European Merger Regulations), or a part of such a concentration, has arisen or will arise; and
  - (c) in relation to which a reference which would otherwise have been possible under section 22 or 33 was prevented from being made under that section by virtue of Community law or anything done under or in accordance with it.
- (3) Provision made under subsection (1) shall include provision ensuring that considerations which are not public interest considerations mentioned in the European intervention notice concerned may not be taken into account in determining whether anything operates, or may be expected to operate, against the public interest.
- (4) Provision made under subsection (1) shall include provision –
  - (a) applying with modifications sections 23 to 32 for the purposes of deciding for the purposes of this section whether a relevant merger situation has been created or whether arrangements are in progress or

- in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
- (b) requiring the OFT to make a report to the Secretary of State before a reference is made;
  - (c) enabling the Secretary of State to make a reference to the Commission;
  - (d) requiring the Commission to investigate and report to the Secretary of State on such a reference;
  - (e) enabling the taking of interim and final enforcement action.
- (5) An order under this section may include provision (including provision for the creation of offences and penalties, the payment of fees and the delegation of functions) corresponding to any provision made in, or in connection with, this Part in relation to intervention notices or special intervention notices and the cases to which they relate.
- (6) In this section “European intervention notice” has the same meaning as in section 67.

#### *Other*

### **69 Newspaper mergers**

- (1) No reference shall, subject to subsection (2), be made under section 22, 33, 45 or 62 in relation to a transfer of a newspaper or of newspaper assets to which section 58(1) of the Fair Trading Act 1973 (c. 41) applies.
- (2) Subsection (1) does not apply in a case falling within section 59(2) of the Act of 1973.
- (3) In this section “transfer of a newspaper or of newspaper assets” has the meaning given by section 57(2) of the Act of 1973.

### **70 Water mergers**

- (1) For sections 32 to 35 of the Water Industry Act 1991 (c. 56) (special provision for water merger references) there shall be substituted –

#### **“32 Duty to refer merger of water or sewerage undertaking**

Subject to section 33 below, it shall be the duty of the OFT to make a merger reference to the Competition Commission if the OFT believes that it is or may be the case –

- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
- (b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.

#### **33 Exclusion of small mergers from duty to make reference**

- (1) The OFT shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the OFT –

- (a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or
  - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.
- (2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—
  - (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or
  - (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.
- (3) For the purposes of subsection (1)(b) above—
  - (a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and
  - (b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.
- (4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) above may, in particular, make provision as to—
  - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).
- (7) The Secretary of State may by regulations amend subsection (1) above so as—
  - (a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or
  - (b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.
- (8) Regulations under subsection (7) above—
  - (a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and

- (b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.
- (9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.

### **34 Application of provisions of Enterprise Act 2002**

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.

### **35 Construction of merger provisions**

- (1) In this Chapter (including Schedule 4ZA)–
    - “enterprise” has the same meaning as in Part 3 of the 2002 Act; and
    - “water enterprise” means an enterprise carried on by a water undertaker.
  - (2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.
  - (3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the OFT or the Secretary of State, in a case in which, or to any extent to which, the OFT is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.
  - (4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.
  - (5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the OFT is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.”
- (2) Before Schedule 4A to the Act of 1991 there shall be inserted, as Schedule 4ZA, the Schedule set out in Schedule 6 to this Act.

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## CHAPTER 4

### ENFORCEMENT

#### *Powers exercisable before references under section 22 or 33*

#### **71 Initial undertakings: completed mergers**

- (1) Subsection (2) applies where the OFT is considering whether to make a reference under section 22.
- (2) The OFT may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) No undertaking shall be accepted under subsection (2) unless the OFT has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created.
- (4) An undertaking under this section –
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the OFT.
- (5) An undertaking which –
  - (a) is in force under this section in relation to a possible reference or reference under section 22; and
  - (b) has not been adopted under section 80 or paragraph 1 of Schedule 7;shall cease to be in force if an order under section 72 or 81 comes into force in relation to that reference or an order under paragraph 2 of that Schedule comes into force in relation to the matter.
- (6) An undertaking under this section shall, if it has not previously ceased to be in force and if it has not been adopted under section 80 or paragraph 1 of Schedule 7, cease to be in force –
  - (a) where the OFT has decided to make the reference concerned under section 22, at the end of the period of 7 days beginning with the making of the reference;
  - (b) where the OFT has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;
  - (c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and
  - (d) where the OFT has otherwise decided not to make the reference concerned under section 22, on the making of that decision.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (8) In this section and section 72 “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the Commission’s decisions on the reference.

**72 Initial enforcement orders: completed mergers**

- (1) Subsection (2) applies where the OFT is considering whether to make a reference under section 22.
- (2) The OFT may by order, for the purpose of preventing pre-emptive action –
  - (a) prohibit or restrict the doing of things which 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) No order shall be made under subsection (2) unless the OFT has reasonable grounds for suspecting that it is or may be the case that –
  - (a) a relevant merger situation has been created; and
  - (b) pre-emptive action is in progress or in contemplation.
- (4) An order under this section –
  - (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.
- (5) An order which –
  - (a) is in force under this section in relation to a possible reference or a reference under section 22; and
  - (b) has not been adopted under section 81 or paragraph 2 of Schedule 7;shall cease to be in force if an undertaking under section 71 or 80 comes into force in relation to that reference or an undertaking under paragraph 1 of that Schedule comes into force in relation to the matter.
- (6) An order under this section shall, if it has not previously ceased to be in force and if it is not adopted under section 81 or paragraph 2 of Schedule 7, cease to be in force –
  - (a) where the OFT has decided to make the reference concerned under section 22, at the end of the period of 7 days beginning with the making of the reference;
  - (b) where the OFT has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;
  - (c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and
  - (d) where the OFT has otherwise decided not to make the reference concerned under section 22, on the making of that decision.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

**73 Undertakings in lieu of references under section 22 or 33**

- (1) Subsection (2) applies if the OFT considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b))



or (as the case may be) 33(3)(b) but taking account of the power of the OFT under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).

- (2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (4) In proceeding under subsection (2), the OFT 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.
- (5) An undertaking under this section –
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the OFT.
- (6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

#### **74 Effect of undertakings under section 73**

- (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 if –
  - (a) the OFT has accepted an undertaking or group of undertakings under section 73; and
  - (b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.
- (2) Subsection (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 OFT or made public before any undertaking concerned was accepted.
- (3) For the purposes of subsection (2) 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.
- (4) In subsection (2) “made public” means so publicised as to be generally known or readily ascertainable.
- (5) In this section “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, the Secretary of State.

#### **75 Order-making power where undertakings under section 73 not fulfilled etc.**

- (1) Subsection (2) applies where the OFT considers that –
  - (a) an undertaking accepted by it under section 73 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the OFT by the person giving the undertaking before the OFT decided to accept the undertaking.
- (2) The OFT may, for any of the purposes mentioned in section 73(2), make an order under this section.
- (3) Subsections (3) and (4) of section 73 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (4) An order under this section may contain –
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the OFT considers appropriate.
- (5) An order under this section –
  - (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.
- (6) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

#### **76 Supplementary interim order-making power**

- (1) Subsection (2) applies where –
  - (a) the OFT has the power to make an order under section 75 in relation to a particular undertaking and intends to make such an order; or
  - (b) the Commission has the power to make an order under section 83 in relation to a particular undertaking and intends to make such an order.
- (2) The OFT or (as the case may be) the Commission may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this section.
- (3) No order shall be made under subsection (2) unless the OFT or (as the case may be) the Commission has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under section 75 or (as the case may be) 83 is in progress or in contemplation.
- (4) An order under subsection (2) may –
  - (a) prohibit or restrict the doing of things which the OFT or (as the case may be) the Commission considers would prejudice the making of the order under section 75 or (as the case may be) 83;

- (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 section—
- (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.
- (6) An order under this section 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 section 75 or (as the case may be) 83 in relation to the undertaking concerned; or
  - (b) the making of the decision not to proceed with such an order.
- (7) The OFT or (as the case may be) the Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

*Interim restrictions and powers*

**77 Restrictions on certain dealings: completed mergers**

- (1) Subsections (2) and (3) apply where—
- (a) a reference has been made under section 22 but not finally determined; and
  - (b) no undertakings under section 71 or 80 are in force in relation to the relevant merger situation concerned and no orders under section 72 or 81 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Commission—
- (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 Commission, assist in any of the activities mentioned in paragraphs (a) to (c) of subsection (2).
- (4) The prohibitions in subsections (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.
- (5) The consent of the Commission under subsection (2) or (3)—
- (a) may be general or special;
  - (b) may be revoked by the Commission; and

- 
- (c) shall be published in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of any person entitled to the benefit of it.
  - (6) Paragraph (c) of subsection (5) shall not apply if the Commission considers that publication is not necessary for the purpose mentioned in that paragraph.
  - (7) Subsections (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) In this section “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.

#### **78 Restrictions on certain share dealings: anticipated mergers**

- (1) Subsection (2) applies where –
  - (a) a reference has been made under section 33; and
  - (b) no undertakings under section 80 are in force in relation to the relevant merger situation concerned and no orders under section 81 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Commission, 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 Commission under subsection (2) –
  - (a) may be general or special;
  - (b) may be revoked by the Commission; and
  - (c) shall be published in such manner as the Commission considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (4) Paragraph (c) of subsection (3) shall not apply if the Commission considers that publication is not necessary for the purpose mentioned in that paragraph.
- (5) Subsection (2) 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.
- (6) In this section and section 79 –
  - “company” includes any body corporate;

“relevant period” means the period beginning with the making of 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.

## 79 Sections 77 and 78: further interpretation provisions

- (1) For the purposes of this Part a reference under section 22 or 33 is finally determined if –
  - (a) the reference is cancelled under section 37(1);
  - (b) the time within which the Commission is to prepare and publish a report under section 38 in relation to the reference has expired and no such report has been prepared and published;
  - (c) the report of the Commission under section 38 contains the decision that there is not an anti-competitive outcome;
  - (d) the report of the Commission under section 38 contains the decision that there is an anti-competitive outcome and the Commission has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84; or
  - (e) the report of the Commission under section 38 contains the decision that there is an anti-competitive outcome and the Commission has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.
- (2) For the purposes of this Part the time when a reference under section 22 or 33 is finally determined is –
  - (a) in a case falling within subsection (1)(a), the making of the decision concerned;
  - (b) in a case falling within subsection (1)(b), the expiry of the time concerned;
  - (c) in a case falling within subsection (1)(c), the publication of the report;
  - (d) in a case falling within subsection (1)(d), the making of the decision under section 41(2); and
  - (e) in a case falling within subsection (1)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (3) For the purposes of section 78 and subject to subsection (4) below, the circumstances in which a person acquires an interest in shares include those where –
  - (a) he enters into a contract to acquire the shares (whether or not for cash);
  - (b) he is not the registered holder but acquires the right to exercise, or to control the exercise of, any right conferred by the holding of the shares; or
  - (c) he –

- 
- (i) acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares; or
    - (ii) assumes an obligation to acquire such an interest.
  - (4) The circumstances in which a person acquires an interest in shares for the purposes of section 78 do not include those where he acquires an interest in pursuance of an obligation assumed before the publication by the OFT of the reference concerned.
  - (5) The circumstances in which a person acquires a right mentioned in subsection (3)–
    - (a) include those where he acquires a right, or assumes an obligation, whose exercise or fulfilment would give him that right; but
    - (b) do not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members.
  - (6) References to rights and obligations in subsections (3) to (5) include conditional rights and conditional obligations.
  - (7) References in sections 77 and 78 to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.
  - (8) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of sections 77 and 78 to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 26 to determine whether enterprises are brought under common control.
  - (9) Sections 736 and 736A of the Companies Act 1985 (c. 6) shall apply for the purposes of sections 77 and 78 to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company; and references to a subsidiary in subsections (8) and (9) of section 736A as so applied shall be construed accordingly.

## **80 Interim undertakings**

- (1) Subsections (2) and (3) apply where a reference under section 22 or 33 has been made but is not finally determined.
- (2) The Commission may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) The Commission 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 Commission adopts it.
- (4) An undertaking adopted under subsection (3)–
  - (a) shall continue in force, in accordance with its terms, when adopted;
  - (b) may be varied or superseded by an undertaking under this section; and
  - (c) may be released by the Commission.
- (5) Any other undertaking under this section–

- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Commission.
- (6) References in this Part to undertakings under this section shall, unless the context otherwise requires, include references to undertakings adopted under this section; and references to the acceptance or giving of undertakings under this section shall be construed accordingly.
- (7) An undertaking which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an order under section 81 comes into force in relation to that reference.
- (8) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 or 33 is finally determined.
- (9) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (10) In this section and section 81 “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the Commission’s decisions on the reference.

## **81 Interim orders**

- (1) Subsections (2) and (3) apply where a reference has been made under section 22 or 33 but is not finally determined.
- (2) The Commission may by order, for the purpose of preventing pre-emptive action—
- (a) prohibit or restrict the doing of things which the Commission 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) The Commission 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 Commission adopts it.
- (4) An order adopted under subsection (3)—
- (a) shall continue in force, in accordance with its terms, when adopted; and
  - (b) may be varied or revoked by an order under this section.
- (5) Any other order under this section—
- (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.

- (6) References in this Part to orders under this section shall, unless the context otherwise requires, include references to orders adopted under this section; and references to the making of orders under this section shall be construed accordingly.
- (7) An order which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an undertaking under section 80 comes into force in relation to that reference.
- (8) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 or 33 is finally determined.
- (9) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

#### *Final powers*

### **82 Final undertakings**

- (1) The Commission may, in accordance with section 41, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) An undertaking under this section –
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Commission.
- (3) An undertaking which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an order under section 76(1)(b) or 83 comes into force in relation to the subject-matter of the undertaking.
- (4) No undertaking shall be accepted under this section in relation to a reference under section 22 or 33 if an order has been made under –
  - (a) section 76(1)(b) or 83 in relation to the subject-matter of the undertaking; or
  - (b) section 84 in relation to that reference.
- (5) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

### **83 Order-making power where final undertakings not fulfilled**

- (1) Subsection (2) applies where the Commission considers that –
  - (a) an undertaking accepted by it under section 82 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the Commission or the OFT by the person giving the undertaking before the Commission decided to accept the undertaking.
- (2) The Commission may, for any of the purposes mentioned in section 41(2), make an order under this section.



- (3) Subsections (3) to (5) of section 41 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (4) An order under this section may contain –
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Commission considers appropriate.
- (5) An order under this section –
  - (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.
- (6) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

#### **84 Final orders**

- (1) The Commission may, in accordance with section 41, make an order under this section.
- (2) An order under this section may contain –
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Commission considers appropriate.
- (3) An order under this section –
  - (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.
- (4) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.
- (5) No order shall be made under this section in relation to a reference under section 22 or 33 if an undertaking has been accepted under section 82 in relation to that reference.

#### *Public interest and special public interest cases*

#### **85 Enforcement regime for public interest and special public interest cases**

- (1) Schedule 7 (which provides for the enforcement regime in public interest and special public interest cases) shall have effect.
- (2) The OFT may advise the Secretary of State in relation to the taking by him of enforcement action under Schedule 7.

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*Undertakings and orders: general provisions***86 Enforcement orders: general provisions**

- (1) An enforcement order may extend 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.
- (2) Nothing in an enforcement order shall have effect so as to—
  - (a) cancel or modify conditions in licences granted—
    - (i) under a patent granted under the Patents Act 1977 (c. 37) or a European patent (UK) (within the meaning of the Act of 1977); or
    - (ii) in respect of a design registered under the Registered Designs Act 1949 (c. 88);by the proprietor of the patent or design; or
  - (b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.
- (3) An enforcement order may prohibit the performance of an agreement already in existence when the order is made.
- (4) Schedule 8 (which provides for the contents of certain enforcement orders) shall have effect.
- (5) Part 1 of Schedule 9 (which enables certain enforcement orders to modify licence conditions etc. in regulated markets) shall have effect.
- (6) In this Part “enforcement order” means an order made under section 72, 75, 76, 81, 83 or 84 or under paragraph 2, 5, 6, 10 or 11 of Schedule 7.

**87 Delegated power of directions**

- (1) An enforcement order may authorise the person making the order to give directions falling within subsection (2) to—
  - (a) a person specified in the directions; or
  - (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this subsection if they are directions—
  - (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the enforcement order concerned; or
  - (b) to do, or refrain from doing, anything so specified or described which the person might be required by that order to do or refrain from doing.
- (3) An enforcement order may authorise the person making the order to vary or revoke any directions so given.

- (4) The court may by order require any person who has failed to comply with directions given by virtue of this section to comply with them, or otherwise remedy his failure, within such time as may be specified in the order.
- (5) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.
- (6) An order under subsection (4) or (5) shall be made on the application of the person authorised by virtue of this section to give the directions concerned.
- (7) An order under subsection (4) or (5) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.
- (8) In this section “the court” means –
  - (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.

#### **88 Contents of certain enforcement orders**

- (1) This section applies in relation to any order under section 75, 83 or 84 or under paragraph 5, 10 or 11 of Schedule 7.
- (2) The order or any explanatory material accompanying the order shall state –
  - (a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;
  - (b) the date on which the order comes into force;
  - (c) the possible consequences of not complying with the order; and
  - (d) the section of this Part under which a review can be sought in relation to the order.

#### **89 Subject-matter of undertakings**

- (1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.
- (2) In this Part “enforcement undertaking” means an undertaking under section 71, 73, 80 or 82 or under paragraph 1, 3 or 9 of Schedule 7.

#### **90 Procedural requirements for certain undertakings and orders**

Schedule 10 (which provides for the procedure for accepting certain enforcement undertakings and making certain enforcement orders and for their termination) shall have effect.

#### **91 Register of undertakings and orders**

- (1) The OFT shall compile and maintain a register for the purposes of this Part.
- (2) The register shall be kept in such form as the OFT considers appropriate.

- (3) The OFT shall ensure that the following matters are entered in the register –
  - (a) the provisions of any enforcement undertaking accepted under this Part;
  - (b) the provisions of any enforcement order made under this Part;
  - (c) the details of any variation, release or revocation of such an undertaking or order; and
  - (d) the details of any consent given by the Commission under section 77(2) or (3) or 78(2) or by the Secretary of State under paragraph 7(2) or (3) or 8(2) of Schedule 7.
- (4) The duty in subsection (3) does not extend to anything of which the OFT is unaware.
- (5) The Commission and the Secretary of State shall inform the OFT of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them, enforcement orders made by them or consents given by them.
- (6) The OFT shall ensure that the contents of the register are available to the public –
  - (a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and
  - (b) subject to such reasonable fees (if any) as the OFT may determine.
- (7) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

*Enforcement functions of OFT*

**92 Duty of OFT to monitor undertakings and orders**

- (1) The OFT shall keep under review –
  - (a) the carrying out of any enforcement undertaking or any enforcement order; and
  - (b) compliance with the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (2) The OFT shall, in particular, from time to time consider –
  - (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
  - (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and –
    - (i) one or more of the parties to it can be released from it; or
    - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
  - (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The OFT shall give the Commission or (as the case may be) the Secretary of State such advice as it considers appropriate in relation to –
  - (a) any possible variation or release by the Commission or (as the case may be) the Secretary of State of an enforcement undertaking accepted by it or (as the case may be) him;

- (b) any possible new enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State so as to supersede another enforcement undertaking given to the Commission or (as the case may be) the Secretary of State;
  - (c) any possible variation or revocation by the Commission or (as the case may be) the Secretary of State of an enforcement order made by the Commission or (as the case may be) the Secretary of State;
  - (d) any possible enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State instead of an enforcement order or any possible enforcement order to be made by the Commission or (as the case may be) the Secretary of State instead of an enforcement undertaking;
  - (e) the enforcement by virtue of section 94(6) to (8) of any enforcement undertaking or enforcement order; or
  - (f) the enforcement by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (4) The OFT shall take such action as it considers appropriate in relation to—
- (a) any possible variation or release by it of an enforcement undertaking accepted by it;
  - (b) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
  - (c) any possible variation or revocation by it of an enforcement order made by it;
  - (d) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;
  - (e) the enforcement by it by virtue of section 94(6) of any enforcement undertaking or enforcement order; or
  - (f) the enforcement by it by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (5) The OFT shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The OFT shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The OFT shall—
- (a) give any report prepared by it under subsection (6) to the Commission;
  - (b) give a copy of the report to the Secretary of State; and
  - (c) publish the report.

### **93 Further role of OFT in relation to undertakings and orders**

- (1) Subsections (2) and (3) apply where—
- (a) the Commission is considering whether to accept undertakings under section 80 or 82; or
  - (b) the Secretary of State is considering whether to accept undertakings under paragraph 1, 3 or 9 of Schedule 7.

- (2) The Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.
- (3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT’s consultations within such period as the relevant authority may require.
- (4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.
- (5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.
- (6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the OFT shall give such advice as it considers appropriate.

*Other*

**94 Rights to enforce undertakings and orders**

- (1) This section applies to any enforcement undertaking or enforcement order.
- (2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.
- (3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.
- (4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or an enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.
- (6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the OFT for an injunction or for interdict or for any other appropriate relief or remedy.
- (7) Compliance with an undertaking under section 80 or 82, an order made by the Commission under section 76 or an order under section 81, 83 or 84, 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.
- (8) Compliance with an undertaking under paragraph 1, 3 or 9 of Schedule 7, an order made by the Secretary of State under paragraph 2 of that Schedule or an order under paragraph 5, 6, 10 or 11 of that Schedule, shall also be enforceable by civil proceedings brought by the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.

- (9) Subsections (6) to (8) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

## 95 Rights to enforce statutory restrictions

- (1) The obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 shall be a duty owed to any person who may be affected by a contravention of the enactment concerned.
- (2) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (3) In any proceedings brought under subsection (2) against a person who has an obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the enactment concerned.
- (4) Compliance with section 77(2) or (3) or 78(2) shall also be enforceable by civil proceedings brought by the OFT or the Commission for an injunction or for interdict or for any other appropriate relief or remedy.
- (5) Compliance with paragraph 7(2) or (3) or 8(2) of Schedule 7 shall also be enforceable by civil proceedings brought by the OFT or the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.
- (6) Subsections (4) and (5) shall not prejudice any right that a person may have by virtue of subsection (2) to bring civil proceedings for contravention or apprehended contravention of section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7.

## CHAPTER 5

### SUPPLEMENTARY

#### *Merger notices*

## 96 Merger notices

- (1) A person authorised to do so by regulations under section 101 may give notice to the OFT of proposed arrangements which might result in the creation of a relevant merger situation.
- (2) Any such notice (in this Part a “merger notice”)—
- (a) shall be in the prescribed form; and
  - (b) shall state that the existence of the proposal has been made public.
- (3) No reference shall be made under section 22, 33 or 45 in relation to—
- (a) arrangements of which notice is given under subsection (1) above or arrangements which do not differ from them in any material respect; or
  - (b) the creation of any relevant merger situation which is, or may be, created in consequence of carrying such arrangements into effect;

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if the period for considering the merger notice has expired without a reference being made under that section in relation to those arrangements.

- (4) Subsection (3) is subject to section 100.
- (5) In this section and sections 99(5)(c) and 100(1)(c) “prescribed” means prescribed by the OFT by notice having effect for the time being and published in the London, Edinburgh and Belfast Gazettes.
- (6) In this Part “notified arrangements” means arrangements of which notice is given under subsection (1) above or arrangements not differing from them in any material respect.

## **97 Period for considering merger notices**

- (1) The period for considering a merger notice is, subject as follows, the period of 20 days beginning with the first day after—
  - (a) the notice has been received by the OFT; and
  - (b) any fee payable by virtue of section 121 to the OFT in respect of the notice has been paid.
- (2) Where no intervention notice is in force in relation to the matter concerned, the OFT may by notice to the person who gave the merger notice extend by a further 10 days the period for considering the merger notice.
- (3) Where an intervention notice is in force in relation to the matter concerned and there has been no extension under subsection (2), the OFT may by notice to the person who gave the merger notice extend by a further 20 days the period for considering the merger notice.
- (4) Where an intervention notice is in force in relation to the matter concerned and there has been an extension under subsection (2), the OFT may by notice to the person who gave the merger notice extend the period for considering the merger notice by a further number of days which, including any extension already made under subsection (2), does not exceed 20 days.
- (5) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the OFT considers that the person has failed to provide, within the period stated in a notice under section 99(2) and in the authorised or required manner, information requested of him in that notice.
- (6) An extension under subsection (5) shall be for the period until the person concerned provides the information to the satisfaction of the OFT or, if earlier, the cancellation by the OFT of the extension.
- (7) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the OFT is seeking undertakings under section 73 or (as the case may be) the Secretary of State is seeking undertakings under paragraph 3 of Schedule 7.
- (8) An extension under subsection (7) shall be for the period beginning with the receipt of the notice under that subsection and ending with the earliest of the following events—
  - (a) the giving of the undertakings concerned;
  - (b) the expiry of the period of 10 days beginning with the first day after the receipt by the OFT of a notice from the person from whom the



- undertakings are being sought stating that he does not intend to give the undertakings; or
- (c) the cancellation by the OFT of the extension.
- (9) The Secretary of State may by notice to the person who gave the merger notice extend the period for considering a merger notice if, by virtue of paragraph 3(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 45.
- (10) An extension under subsection (9) shall be for the period of the delay.
- (11) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(3) of the European Merger Regulations (but is not yet proceeding with the matter in pursuance of such a request).
- (12) An extension under subsection (11) shall be for the period beginning with the receipt of the notice under that subsection and ending with the receipt of a notice under subsection (13).
- (13) The OFT shall, in connection with any notice given by it under subsection (11), by notice inform the person who gave the merger notice of the completion by the European Commission of its consideration of the request of the United Kingdom.

#### 98 Section 97: supplementary

- (1) A notice under section 97(2), (3), (4), (5), (7), (9) or (11) shall be given, before the end of the period for considering the merger notice, to the person who gave the merger notice.
- (2) A notice under section 97(5)–
- (a) shall also be given within 5 days of the end of the period within which the information is to be provided and which is stated in the notice under section 99(2); and
  - (b) shall also inform the person who gave the merger notice of—
    - (i) the OFT's opinion as mentioned in section 97(5); and
    - (ii) the OFT's intention to extend the period for considering a merger notice.
- (3) In determining for the purposes of section 97(1), (2), (3), (4) or (8)(b) or subsection (2)(a) above any period which is expressed in the enactment concerned as a period of days or number of days no account shall be taken of—
- (a) Saturday, Sunday, Good Friday and Christmas Day; and
  - (b) any day which is a bank holiday in England and Wales.
- (4) Any reference in this Part (apart from in section 97(1) and section 99(1)) to the period for considering a merger notice shall, if that period is extended by virtue of any one or more of subsections (2), (3), (4) (5), (7), (9) and (11) of section 97 in relation to a particular case, be construed in relation to that case as a reference to that period as so extended; but only one extension is possible under section 97(2), (3) or (4).
- (5) Where the period for considering a merger notice is extended or further extended by virtue of section 97, the period as extended or (as the case may be)

further extended shall, subject to subsections (6) and (7), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

- (6) Subsection (7) applies where—
- (a) the period for considering a merger notice is further extended;
  - (b) the further extension and at least one previous extension is made under one or more of subsections (5), (7), (9) and (11) of section 97; and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.

## **99 Certain functions of OFT and Secretary of State in relation to merger notices**

- (1) The OFT shall, so far as practicable and when the period for considering any merger notice begins, take such action as the OFT considers appropriate to bring—
- (a) the existence of the proposal;
  - (b) the fact that the merger notice has been given; and
  - (c) the date on which the period for considering the notice may expire;
- to the attention of those whom the OFT considers would be affected if the arrangements were carried into effect.
- (2) The OFT may by notice to the person who gave the merger notice request him to provide the OFT with such information as the OFT or (as the case may be) the Secretary of State may require for the purpose of carrying out its or (as the case may be) his functions in relation to the merger notice.
- (3) A notice under subsection (2) shall state—
- (a) the information required;
  - (b) the period within which the information is to be provided; and
  - (c) the possible consequences of not providing the information within the stated period and in the authorised or required manner.
- (4) A notice by the OFT under subsection (2) shall be given, before the end of the period for considering the merger notice, to the person who gave the merger notice.
- (5) The OFT may, at any time before the end of the period for considering any merger notice, reject the notice if—
- (a) the OFT suspects that any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who gave the notice or any connected person is in any material respect false or misleading;
  - (b) the OFT suspects that it is not proposed to carry the notified arrangements into effect;
  - (c) any prescribed information is not given in the merger notice or any information requested by notice under subsection (2) is not provided as required; or
  - (d) the OFT considers that the notified arrangements are, or if carried into effect would result in, a concentration with a Community dimension within the meaning of the European Merger Regulations.

- (6) In this section and section 100 “connected person”, in relation to the person who gave a merger notice, means –
- (a) any person who, for the purposes of section 127, is associated with him; or
  - (b) any subsidiary of the person who gave the merger notice or of any person so associated with him.

## 100 Exceptions to protection given by merger notices

- (1) Section 96(3) does not prevent any reference being made to the Commission if –
- (a) before the end of the period for considering the merger notice, the OFT rejects the notice under section 99(5);
  - (b) before the end of that period, any of the enterprises to which the notified arrangements relate cease to be distinct from each other;
  - (c) any information (whether prescribed information or not) that –
    - (i) is, or ought to be, known to the person who gave the merger notice or any connected person; and
    - (ii) is material to the notified arrangements;is not disclosed to the OFT by such time before the end of that period as may be specified in regulations under section 101;
  - (d) at any time after the merger notice is given but before the enterprises to which the notified arrangements relate cease to be distinct from each other, any of those enterprises ceases to be distinct from any enterprise other than an enterprise to which those arrangements relate;
  - (e) the six months beginning with the end of the period for considering the merger notice expires without the enterprises to which the notified arrangements relate ceasing to be distinct from each other;
  - (f) the merger notice is withdrawn; or
  - (g) any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who gave the notice or any connected person is in any material respect false or misleading.
- (2) Subsection (3) applies where –
- (a) two or more transactions which have occurred, or, if any arrangements are carried into effect, will occur, may be treated for the purposes of a reference under section 22, 33 or 45 as having occurred simultaneously on a particular date; and
  - (b) section 96(3) does not prevent such a reference in relation to the last of those transactions.
- (3) Section 96(3) does not prevent such a reference in relation to any of those transactions which actually occurred less than six months before –
- (a) that date; or
  - (b) the actual occurrence of another of those transactions in relation to which such a reference may be made (whether or not by virtue of this subsection).
- (4) In determining for the purposes of subsections (2) and (3) the time at which any transaction actually occurred, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.
- (5) In this section references to the enterprises to which the notified arrangements relate are references to those enterprises that would have ceased to be distinct

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from one another if the arrangements mentioned in the merger notice concerned had been carried into effect at the time when the notice was given.

### **101 Merger notices: regulations**

- (1) The Secretary of State may make regulations for the purposes of sections 96 to 100.
- (2) The regulations may, in particular—
  - (a) provide for section 97(1), (2), (3) or (4) or section 100(1)(e) to apply as if any reference to a period of days or months were a reference to a period specified in the regulations for the purposes of the enactment concerned;
  - (b) provide for the manner in which any merger notice is authorised or required to be rejected or withdrawn, and the time at which any merger notice is to be treated as received or rejected;
  - (c) provide for the time at which any notice under section 97(7), (8)(b), (11) or (13) is to be treated as received;
  - (d) provide for the manner in which any information requested by the OFT or any other material information is authorised or required to be provided or disclosed, and the time at which such information is to be treated as provided or disclosed (including the time at which it is to be treated as provided to the satisfaction of the OFT for the purposes of section 97(6));
  - (e) provide for the person who gave the merger notice to be informed, in circumstances in which section 97(6) applies—
    - (i) of the fact that the OFT is satisfied as to the provision of the information requested by the OFT or (as the case may be) of the OFT's decision to cancel the extension; and
    - (ii) of the time at which the OFT is to be treated as so satisfied or (as the case may be) of the time at which the cancellation is to be treated as having effect;
  - (f) provide for the person who gave the merger notice to be informed, in circumstances in which section 97(8) applies—
    - (i) of any decision by the OFT to cancel the extension; and
    - (ii) of the time at which such a cancellation is to be treated as having effect;
  - (g) provide for the time at which any fee is to be treated as paid;
  - (h) provide that a person is, or is not, to be treated, in such circumstances as may be specified in the regulations, as acting on behalf of a person authorised by regulations under this section to give a merger notice or a person who has given such a notice.

### **102 Power to modify sections 97 to 101**

The Secretary of State may, for the purposes of determining the effect of giving a merger notice and the action which may be or is to be taken by any person in connection with such a notice, by order modify sections 97 to 101.

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*General duties in relation to references*

**103 Duty of expedition in relation to references**

- (1) In deciding whether to make a reference under section 22 or 33 the OFT shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.
- (2) In deciding whether to make a reference under section 45 or 62 the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.

**104 Certain duties of relevant authorities to consult**

- (1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to be adverse to the interests of a relevant party.
- (2) The relevant authority shall, so far as practicable, consult that party about what is proposed before making that decision.
- (3) In consulting the party concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.
- (4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to –
  - (a) any restrictions imposed by any timetable for making the decision; and
  - (b) any need to keep what is proposed, or the reasons for it, confidential.
- (5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.
- (6) In this section –
  - “the relevant authority” means the OFT, the Commission or the Secretary of State;
  - “relevant decision” means –
    - (a) in the case of the OFT, any decision by the OFT –
      - (i) as to whether to make a reference under section 22 or 33 or accept undertakings under section 73 instead of making such a reference; or
      - (ii) to vary under section 37 such a reference;
    - (b) in the case of the Commission, any decision on the questions mentioned in section 35(1) or (3), 36(1) or (2), 47 or 63; and
    - (c) in the case of the Secretary of State, any decision by the Secretary of State –
      - (i) as to whether to make a reference under section 45 or 62; or
      - (ii) to vary under section 49 or (as the case may be) 64 such a reference; and
  - “relevant party” means any person who appears to the relevant authority to control enterprises which are the subject of the reference or possible reference concerned.

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*Information and publicity requirements***105 General information duties of OFT and Commission**

- (1) Where the OFT decides to investigate a matter so as to enable it to decide whether to make a reference under section 22 or 33, or so as to make a report under section 44 or 61, it shall, so far as practicable, take such action as it considers appropriate to bring information about the investigation to the attention of those whom it considers might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.
- (2) Subsection (1) does not apply in relation to arrangements which might result in the creation of a relevant merger situation if a merger notice has been given in relation to those arrangements under section 96.
- (3) The OFT shall give the Commission—
  - (a) such information in its possession as the Commission may reasonably require to enable the Commission to carry out its functions under this Part; and
  - (b) any other assistance which the Commission may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the OFT to give.
- (4) The OFT shall give the Commission any information in its possession which has not been requested by the Commission but which, in the opinion of the OFT, would be appropriate to give to the Commission for the purpose of assisting it in carrying out its functions under this Part.
- (5) The OFT and the Commission shall give the Secretary of State—
  - (a) such information in their possession as the Secretary of State may by direction reasonably require to enable him to carry out his functions under this Part; and
  - (b) any other assistance which the Secretary of State may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the OFT or (as the case may be) the Commission to give.
- (6) The OFT shall give the Secretary of State any information in its possession which has not been requested by the Secretary of State but which, in the opinion of the OFT, would be appropriate to give to the Secretary of State for the purpose of assisting him in carrying out his functions under this Part.
- (7) The Commission shall have regard to any information given to it under subsection (3) or (4); and the Secretary of State shall have regard to any information given to him under subsection (5) or (6).
- (8) Any direction given under subsection (5)—
  - (a) shall be in writing; and
  - (b) may be varied or revoked by a subsequent direction.

**106 Advice and information about references under sections 22 and 33**

- (1) As soon as reasonably practicable after the passing of this Act, the OFT shall prepare and publish general advice and information about the making of references by it under section 22 or 33.

- (2) The OFT may at any time publish revised, or new, advice or information.
- (3) As soon as reasonably practicable after the passing of this Act, the Commission shall prepare and publish general advice and information about the consideration by it of references under section 22 or 33 and the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.
- (4) The Commission may at any time publish revised, or new, advice or information.
- (5) Advice and information published under this section shall be prepared with a view to—
  - (a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the OFT or (as the case may be) the Commission expects such provisions to operate.
- (6) Advice (or information) published by virtue of subsection (1) or (3) may include advice (or information) about the factors which the OFT or (as the case may be) the Commission may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (7) Any advice or information published by the OFT or the Commission under this section shall be published in such manner as the OFT or (as the case may be) the Commission considers appropriate.
- (8) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.
- (9) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.

#### **107 Further publicity requirements**

- (1) The OFT shall publish—
  - (a) any reference made by it under section 22 or 33 or any decision made by it not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33);
  - (b) any variation made by it under section 37 of a reference under section 22 or 33;
  - (c) such information as it considers appropriate about any decision made by it under section 57(1) to bring a case to the attention of the Secretary of State;
  - (d) any enforcement undertaking accepted by it under section 71;
  - (e) any enforcement order made by it under section 72 or 76 or paragraph 2 of Schedule 7;
  - (f) any variation, release or revocation of such an undertaking or order;
  - (g) any decision made by it as mentioned in section 76(6)(b); and
  - (h) any decision made by it to dispense with the requirements of Schedule 10.
- (2) The Commission shall publish—
  - (a) any cancellation by it under section 37(1) of a reference under section 33;

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- (b) any decision made by it under section 37(2) to treat a reference made under section 22 or 33 as if it had been made under section 32 or (as the case may be) 22;
  - (c) any extension by it under section 39 of the period within which a report under section 38 is to be prepared and published;
  - (d) any decision made by it to cancel an extension as mentioned in section 39(8)(b);
  - (e) any decision made by it under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;
  - (f) any decision made by it that there has been a material change of circumstances as mentioned in subsection (3) of section 41 or there is another special reason as mentioned in that subsection of that section;
  - (g) any cancellation by it under section 48(1) or 53(1) of a reference under section 45 or any cancellation by it under section 64(1) of a reference under section 62;
  - (h) any decision made by it under section 49(1) to treat –
    - (i) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
    - (ii) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;
  - (i) any extension by it under section 51 of the period within which a report under section 50 is to be prepared and published;
  - (j) any decision made by it under section 51(8)(b) to cancel such an extension;
  - (k) any extension by it under section 51 as applied by section 65(3) of the period within which a report under section 65 is to be prepared and published;
  - (l) any decision made by it under section 51(8)(b) as applied by section 65(3) to cancel such an extension;
  - (m) any decision made by it under section 64(2) to treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section;
  - (n) any decision made by it as mentioned in section 76(6)(b);
  - (o) any enforcement order made by it under section 76 or 81;
  - (p) any enforcement undertaking accepted by it under section 80;
  - (q) any variation, release or revocation of such an order or undertaking; and
  - (r) any decision made by it to dispense with the requirements of Schedule 10.
- (3) The Secretary of State shall publish –
- (a) any intervention notice or special intervention notice given by him;
  - (b) any report of the OFT under section 44 or 61 which has been received by him;
  - (c) any reference made by him under section 45 or 62 or any decision made by him not to make such a reference;
  - (d) any variation made by him under section 49 of a reference under section 45 or under section 64 of a reference under section 62;
  - (e) any report of the Commission under section 50 or 65 which has been received by him;



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- (f) any decision made by him neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule;
  - (g) any notice given by him under section 56(1);
  - (h) any enforcement undertaking accepted by him under paragraph 1 of Schedule 7;
  - (i) any variation or release of such an undertaking;
  - (j) any decision made by him as mentioned in paragraph 6(6)(b) of Schedule 7; and
  - (k) any decision made by him to dispense with the requirements of Schedule 10.
- (4) Where any person is under a duty by virtue of subsection (1), (2) or (3) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (5) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.
- (6) Subsections (4) and (5) shall not apply in relation to any information published under subsection (1)(c).
- (7) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 54(2) or 66(2); or
  - (b) any decision to make an order under section 58(3) or vary or revoke such an order.
- (8) Such reasons may be published after—
- (a) in the case of subsection (7)(a), the publication of the decision concerned; and
  - (b) in the case of subsection (7)(b), the making of the order or of the variation or revocation;
- if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.
- (9) The Secretary of State shall publish—
- (a) the report of the OFT under section 44 in relation to a matter no later than publication of his decision as to whether to make a reference under section 45 in relation to that matter; and
  - (b) the report of the Commission under section 50 in relation to a matter no later than publication of his decision under section 54(2) in relation to that matter.
- (10) The Secretary of State shall publish—
- (a) the report of the OFT under section 61 in relation to a matter no later than publication of his decision as to whether to make a reference under section 62 in relation to that matter; and
  - (b) the report of the Commission under section 65 in relation to a matter no later than publication of his decision under section 66(2) in relation to that matter.

- (11) Where the Secretary of State has decided under section 55(2) or 66(6) to accept an undertaking under paragraph 9 of Schedule 7 or to make an order under paragraph 11 of that Schedule, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the Commission's report under section 50 or (as the case may be) 65, before each House of Parliament.

## **108 Defamation**

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, the Commission or the Secretary of State in the exercise of any of their functions under this Part.

### *Investigation powers*

## **109 Attendance of witnesses and production of documents etc.**

- (1) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—
- (a) to attend at a time and place specified in the notice; and
  - (b) to give evidence to the Commission or a person nominated by the Commission for the purpose.
- (2) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—
- (a) to produce any documents which—
    - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
    - (ii) are in that person's custody or under his control; and
  - (b) to produce them at a time and place so specified and to a person so specified.
- (3) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person who carries on any business requiring him—
- (a) to supply to the Commission such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (4) A notice under this section shall include information about the possible consequences of not complying with the notice.
- (5) The Commission or any person nominated by it for the purpose may, for the purpose of any investigation on a reference made to it under this Part, take evidence on oath, and for that purpose may administer oaths.
- (6) The person to whom any document is produced in accordance with a notice under this section may, for the purpose of any investigation on a reference made to the Commission under this Part, copy the document so produced.
- (7) No person shall be required under this section—
- (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or

- (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (8) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.
- (9) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (10) In this section “the court” means –
  - (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.

#### **110 Enforcement of powers under section 109: general**

- (1) Where the Commission considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109, it may impose a penalty in accordance with section 111.
- (2) The Commission may proceed (whether at the same time or at different times) under subsection (1) and section 39(4) or (as the case may be) 51(4) (including that enactment as applied by section 65(3)) in relation to the same failure.
- (3) Where the Commission considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 109(6), it may impose a penalty in accordance with section 111.
- (4) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the Commission on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.
- (5) A person, subject to subsection (6), commits an offence if he intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under section 109.
- (6) A person does not commit an offence under subsection (5) in relation to any act which constitutes a failure to comply with a notice under section 109 if the Commission has proceeded against that person under subsection (1) above in relation to that failure.
- (7) A person who commits an offence under subsection (5) 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.
- (8) The Commission shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (5) if that person has been found guilty of that offence.
- (9) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 39(4) or 51(4) (including that enactment as applied by section 65(3)), the Commission shall have regard to the statement of policy which was most

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recently published under section 116 at the time when the failure concerned or (as the case may be) the obstruction or delay concerned occurred.

- (10) The reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

## **111 Penalties**

- (1) A penalty imposed under section 110(1) or (3) shall be of such amount as the Commission considers appropriate.
- (2) The amount may, in the case of a penalty imposed under section 110(1), be a fixed amount, an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The amount shall, in the case of a penalty imposed under section 110(3), be a fixed amount.
- (4) No penalty imposed under section 110(1) shall—
  - (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
  - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify; and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (5) In imposing a penalty by reference to a daily rate—
  - (a) no account shall be taken of any days before the service of the notice under section 112 on the person concerned; and
  - (b) unless the Commission determines an earlier date (whether before or after the penalty is imposed), the amount payable shall cease to accumulate at the beginning of—
    - (i) the day on which the requirement of the notice concerned under section 109 is satisfied or (as the case may be) the obstruction or delay is removed; or
    - (ii) if earlier, the day on which the report of the Commission on the reference concerned is published (or, in the case of a report under section 50 or 65, given) or, if no such report is published (or given) within the period permitted for that purpose by this Part, the latest day on which the report may be published (or given) within the permitted period.
- (6) No penalty imposed under section 110(3) shall exceed such amount as the Secretary of State may by order specify.
- (7) An order under subsection (4) or (6) shall not specify—
  - (a) in the case of a fixed amount, an amount exceeding £30,000;
  - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and

- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (8) Before making an order under subsection (4) or (6) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

## 112 Penalties: main procedural requirements

- (1) As soon as practicable after imposing a penalty under section 110(1) or (3), the Commission shall give notice of the penalty.
- (2) The notice shall state—
  - (a) that the Commission has imposed a penalty on the person concerned;
  - (b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;
  - (c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
  - (d) the failure or (as the case may be) the obstruction or delay which the Commission considers gave it the power to impose the penalty;
  - (e) any other facts which the Commission considers justify the imposition of a penalty and the amount or amounts of the penalty;
  - (f) the manner in which, and place at which, the penalty is required to be paid to the Commission;
  - (g) the date or dates, no earlier than the end of the relevant period beginning with the date of service of the notice on the person concerned, by which the penalty or (as the case may be) different portions of it are required to be paid;
  - (h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and
  - (i) that the person concerned has the right to apply under subsection (3) below or to appeal under section 114 and the main details of those rights.
- (3) The person against whom the penalty was imposed may, within 14 days of the date of service on him of a notice under subsection (1), apply to the Commission for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.
- (4) A notice under this section shall be given by—
  - (a) serving a copy of the notice on the person on whom the penalty was imposed; and
  - (b) publishing the notice.
- (5) In this section “relevant period” means the period of 28 days mentioned in subsection (3) of section 114 or, if another period is specified by the Secretary of State under that subsection, that period.

**113 Payments and interest by instalments**

- (1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).
- (2) Where an application has been made under section 112(3), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.
- (3) If a portion of a penalty has not been paid by the date required for it, the Commission may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.
- (4) Any sums received by the Commission in or towards the payment of a penalty, or interest on a penalty, shall be paid into the Consolidated Fund.

**114 Appeals in relation to penalties**

- (1) This section applies if a person on whom a penalty is imposed under section 110(1) or (3) is aggrieved by –
  - (a) the imposition or nature of the penalty;
  - (b) the amount or amounts of the penalty; or
  - (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
- (2) The person aggrieved may apply to the Competition Appeal Tribunal.
- (3) If a copy of the notice under section 112(1) was served on the person on whom the penalty was imposed, the application to the Competition Appeal Tribunal shall, subject to subsection (4), be made within –
  - (a) the period of 28 days starting with the day on which the copy was served on the person concerned; or
  - (b) such other period as the Secretary of State may by order specify.
- (4) If the application relates to a decision of the Commission on an application by the person on whom the penalty was imposed under section 112(3), the application to the Competition Appeal Tribunal shall be made within –
  - (a) the period of 28 days starting with the day on which the person concerned is notified of the decision; or
  - (b) such other period as the Secretary of State may by order specify.
- (5) On an application under this section, the Competition Appeal Tribunal may –
  - (a) quash the penalty;
  - (b) substitute a penalty of a different nature or of such lesser amount or amounts as the Competition Appeal Tribunal considers appropriate; or
  - (c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the Commission an alternative date or dates;if it considers it appropriate to do so.
- (6) The Competition Appeal Tribunal shall not substitute a penalty of a different nature under subsection (5)(b) unless it considers that the person on whom the

penalty is imposed will, or is likely to, pay less under the substituted penalty than he would have paid under the original penalty.

- (7) Where an application has been made under this section –
  - (a) the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with; and
  - (b) the Commission may agree to reduce the amount or amounts of the penalty in settlement of the application.
- (8) Where the Competition Appeal Tribunal substitutes a penalty of a different nature or of a lesser amount or amounts it may require the payment of interest on the substituted penalty at such rate or rates, and from such date or dates, as it considers appropriate.
- (9) Where the Competition Appeal Tribunal specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.
- (10) An appeal lies to the appropriate court –
  - (a) on a point of law arising from a decision of the Tribunal in proceedings under this section; or
  - (b) from a decision of the Tribunal in such proceedings as to the amount or amounts of a penalty.
- (11) An appeal under subsection (10) –
  - (a) may be brought by a party to the proceedings before the Tribunal; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- (12) In this section “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session.

### **115 Recovery of penalties**

Where a penalty imposed under section 110(1) or (3), or any portion of such a penalty, has not been paid by the date on which it is required to be paid and –

- (a) no application relating to the penalty has been made under section 114 during the period within which such an application may be made, or
- (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the Commission may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the Commission.

### **116 Statement of policy**

- (1) The Commission shall prepare and publish a statement of policy in relation to the enforcement of notices under section 109.
- (2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 110(1) or (3).

- (3) The Commission may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The Commission shall consult such persons as it considers appropriate when preparing or revising its statement of policy.

#### **117 False or misleading information**

- (1) A person commits an offence if—
  - (a) he supplies any information to the OFT, the Commission or the Secretary of State in connection with any of their functions under this Part;
  - (b) the information is false or misleading in a material respect; and
  - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
- (2) A person commits an offence if he—
  - (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
  - (b) recklessly supplies any information to another person which is false or misleading in a material respect;knowing that the information is to be used for the purpose of supplying information to the OFT, the Commission or the Secretary of State in connection with any of their functions under this Part.
- (3) A person who commits an offence under subsection (1) or (2) 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.

#### *Reports*

#### **118 Excisions from reports**

- (1) Subsection (2) applies where the Secretary of State is under a duty to publish—
  - (a) a report of the OFT under section 44 or 61; or
  - (b) a report of the Commission under section 50 or 65.
- (2) The Secretary of State may exclude a matter from the report concerned if he considers that publication of the matter would be inappropriate.
- (3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.
- (4) The body which has prepared the report shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).
- (5) References in sections 38(4) and 107(11) to the giving or laying of a report of the Commission shall be construed as references to the giving or laying of the report as published.



### 119 Minority reports of Commission

- (1) Subsection (2) applies where, on a reference to the Commission under this Part, a member of a group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41), disagrees with any decisions contained in the report of the Commission under this Part as the decisions of the Commission.
- (2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

#### *Miscellaneous*

### 120 Review of decisions under Part 3

- (1) Any person aggrieved by a decision of the OFT, the Secretary of State or the Commission under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation may apply to the Competition Appeal Tribunal for a review of that decision.
- (2) For this purpose “decision” –
  - (a) does not include a decision to impose a penalty under section 110(1) or (3); but
  - (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.
- (3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.
- (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Competition Appeal Tribunal may –
  - (a) dismiss the application or quash the whole or part of the decision to which it relates; and
  - (b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.
- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section –
  - “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and
  - “Tribunal rules” has the meaning given by section 15(1).

**121 Fees**

- (1) The Secretary of State may by order require the payment to him or the OFT of such fees as may be prescribed by the order in connection with the exercise by the Secretary of State, the OFT and the Commission of their functions under or by virtue of this Part, Part V of the Fair Trading Act 1973 (c. 41) and sections 32 to 34 of, and Schedule 4ZA to, the Water Industry Act 1991 (c. 56).
- (2) An order under this section may, in particular, provide for fees to be payable—
  - (a) in respect of a merger notice;
  - (b) in respect of an application for the consent of the Secretary of State under section 58(1) of the Act of 1973 to the transfer of a newspaper or of newspaper assets; or
  - (c) on the occurrence of any event specified in the order.
- (3) The events that may be specified in an order under this section by virtue of subsection (2)(c) include, in particular—
  - (a) the decision by the OFT in relation to a possible reference under section 22 or 33 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (b) the decision by the Secretary of State in relation to a possible reference under section 45 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
  - (c) the decision by the Secretary of State in relation to a possible reference under section 62 that—
    - (i) it is or may be the case that a special merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation; and
    - (ii) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
  - (d) the decision by the OFT in relation to a possible reference under section 32 of the Act of 1991 that it is or may be the case that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises or that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) of that section.
- (4) An order under this section may, in particular, contain provision—
  - (a) for ascertaining the persons by whom fees are payable;
  - (b) specifying whether any fee is payable to the Secretary of State or the OFT;
  - (c) for the amount of any fee to be calculated by reference to matters which may include—
    - (i) in a case involving functions of the Secretary of State under sections 57 to 61 of the Act of 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the order) of each newspaper and the average

- circulation per day of publication (within the meaning of Part V of that Act) of each newspaper; and
- (ii) in any other case, the value of the turnover of the enterprises concerned;
  - (d) as to the time when any fee is to be paid; and
  - (e) for the repayment by the Secretary of State or the OFT of the whole or part of any fee in specified circumstances.
- (5) For the purposes of subsection (4)(c)(ii) the turnover of an enterprise shall be determined in accordance with such provisions as may be specified in an order under this section.
- (6) Provision made by virtue of subsection (5) may, in particular, include provision –
- (a) as to the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
  - (b) as to the date or dates by reference to which an enterprise's turnover is to be determined;
  - (c) restricting the turnover to be taken into consideration to turnover which has a connection of a particular description with the United Kingdom.
- (7) An order under this section may, in particular, in connection with provisions of the kind mentioned in subsection (5) make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (6)).
- (8) In determining the amount of any fees to be prescribed by an order under this section, the Secretary of State may take into account all costs incurred by him and by the OFT in respect of the exercise by him, the OFT and the Commission of their respective functions under or by virtue of this Part, Part V of the Act of 1973 and sections 32 to 34 of, and Schedule 4ZA to, the Act of 1991.
- (9) Fees paid to the Secretary of State or the OFT under this section shall be paid into the Consolidated Fund.
- (10) In this section “newspaper” has the same meaning as in Part V of the Act of 1973.

## 122 Primacy of Community law

- (1) Advice and information published by virtue of section 106(1) or (3) shall include such advice and information about the effect of Community law, and anything done under or in accordance with it, on the provisions of this Part as the OFT or (as the case may be) the Commission considers appropriate.
- (2) Advice and information published by the OFT by virtue of section 106(1) shall, in particular, include advice and information about the circumstances in which the duties of the OFT under sections 22 and 33 do not apply as a result of the European Merger Regulations or anything done under or in accordance with them.
- (3) The duty or power to make a reference under section 22 or 45(2) or (3), and the power to give an intervention notice under section 42, shall apply in a case in which the relevant enterprises ceased to be distinct enterprises at a time or in

circumstances not falling within section 24 if the condition mentioned in subsection (4) is satisfied.

- (4) The condition mentioned in this subsection is that, because of the European Merger Regulations or anything done under or in accordance with them, the reference, or (as the case may be) the reference under section 22 to which the intervention notice relates, could not have been made earlier than 4 months before the date on which it is to be made.
- (5) Where the duty or power to make a reference under section 22 or 45(2) or (3), or the power to give an intervention notice under section 42, applies as mentioned in subsection (3), references in this Part to the creation of a relevant merger situation shall be construed accordingly.

### **123 Power to alter share of supply test**

- (1) The Secretary of State may by order amend or replace the conditions which determine for the purposes of this Part whether a relevant merger situation has been created.
- (2) The Secretary of State shall not exercise his power under subsection (1)—
  - (a) to amend or replace the conditions mentioned in paragraphs (a) and (b) of subsection (1) of section 23;
  - (b) to amend or replace the condition mentioned in paragraph (a) of subsection (2) of that section.
- (3) In exercising his power under subsection (1) to amend or replace the condition mentioned in paragraph (b) of subsection (2) of section 23 or any condition which for the time being applies instead of it, the Secretary of State shall, in particular, have regard to the desirability of ensuring that any amended or new condition continues to operate by reference to the degree of commercial strength which results from the enterprises concerned having ceased to be distinct.
- (4) Before making an order under this section the Secretary of State shall consult the OFT and the Commission.
- (5) An order under this section may provide for the delegation of functions to the decision-making authority.

*Other*

### **124 Orders and regulations under Part 3**

- (1) Any power of the Secretary of State to make an order or regulations under this Part shall be exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order or regulations under this Part—
  - (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.

- (3) The power of the Secretary of State under section 34 or 123 (including that power as extended by subsection (2) above) may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (4) The power of the Secretary of State under section 40(8), 52(8) (including that enactment as applied by section 65(3)), 58(3), 68 or 102 as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (5) An order made by the Secretary of State under section 28 (including that enactment as applied by section 42(5), 59(5) and 67(7)), 40(8), 52(8) (including that enactment as applied by section 65(3)), 111(4) or (6), 114(3)(b) or (4)(b) or 121 or Schedule 7 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) No order shall be made by the Secretary of State under section 34, 68, 102, 123 or 128(6) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (7) An order made by the Secretary of State under section 58(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.
- (8) In calculating the period of 28 days mentioned in subsection (7), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) If an order made by the Secretary of State ceases to have effect by virtue of subsection (7), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.
- (10) If, apart from this subsection, an order made by the Secretary of State under section 58(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

## 125 Offences by bodies corporate

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in such a capacity,he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he as well as the

partnership commits the offence and shall be liable to be proceeded against and punished accordingly.

- (4) In subsection (3) “partner” includes a person purporting to act as a partner.

## **126 Service of documents**

- (1) Any document required or authorised by virtue of this Part to be served on any person may be served –
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
  - (b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body;
  - (c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or
  - (d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that –
- (a) in the case of service on a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;
  - (c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.
- (3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (4) Subsection (5) applies if a person to be served under this Part with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined under subsection (2)) as the one at which he or someone on his behalf will accept documents of the same description as that document.
- (5) In relation to that document, that address shall be treated as his proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section, instead of that determined under subsection (2).
- (6) Any notice in writing or other document required or authorised by virtue of this Part to be served on any person may be served on that person by transmitting the text of the notice or other document to him by means of a telecommunication system (within the meaning of the Telecommunications Act 1984 (c. 12)) or by other means but while in electronic form provided the text is received by that person in legible form and is capable of being used for subsequent reference.

- (7) This section does not apply to any document if rules of court make provision about its service.
- (8) In this section references to serving include references to similar expressions (such as giving or sending).

#### **127 Associated persons**

- (1) Associated persons, and any bodies corporate which they or any of them control, shall be treated as one person –
  - (a) for the purpose of deciding under section 26 whether any two enterprises have been brought under common ownership or common control; and
  - (b) for the purpose of determining what activities are carried on by way of business by any one person so far as that question arises in connection with paragraph 13(2) of Schedule 8.
- (2) Subsection (1) shall not exclude from section 26 any case which would otherwise fall within that section.
- (3) A reference under section 22, 33, 45 or 62 (whether or not made by virtue of this section) may be framed so as to exclude from consideration, either altogether or for a specified purpose or to a specified extent, any matter which, apart from this section, would not have been taken into account on that reference.
- (4) For the purposes of this section –
  - (a) any individual and that individual's spouse or partner and any relative, or spouse or partner of a relative, of that individual or of that individual's spouse or partner;
  - (b) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
  - (c) persons carrying on business in partnership and the spouse or partner and relatives of any of them; or
  - (d) two or more persons acting together to secure or exercise control of a body of persons corporate or unincorporate or to secure control of any enterprise or assets,shall be regarded as associated with one another.
- (5) The reference in subsection (1) to bodies corporate which associated persons control shall be construed in accordance with section 26(3) and (4).
- (6) In this section "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild of any person, or anyone adopted by a person, whether legally or otherwise, as his child being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a spouse or partner shall include a former spouse or partner.

#### **128 Supply of services and market for services etc.**

- (1) References in this Part to the supply of services shall be construed in accordance with this section; and references in this Part to a market for services and other related expressions shall be construed accordingly.

- (2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.
- (3) The supply of services includes –
  - (a) performing for gain or reward any activity other than the supply of goods;
  - (b) rendering services to order;
  - (c) the provision of services by making them available to potential users.
- (4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.
- (5) The supply of services includes making arrangements by means of a relevant agreement (within the meaning of section 189(2) of the Broadcasting Act 1990 (c. 42)) for sharing the use of telecommunications apparatus.
- (6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State may by order specify.

## 129 Other interpretation provisions

- (1) In this Part, unless the context otherwise requires –
  - “action” includes omission; and references to the taking of action include references to refraining from action;
  - “agreement” means any agreement or arrangement, in whatever way and whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;
  - “business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;
  - “change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;
  - “Community law” means –
    - (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and
    - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties;
  - “consumer” means any person who is –
    - (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
    - (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;
 and who does not receive or seek to receive the goods or services in the course of a business carried on by him;
  - “customer” includes a customer who is not a consumer;



- “enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;
- “enterprise” means the activities, or part of the activities, of a business;
- “the European Merger Regulations” means Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997;
- “goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;
- “modify” includes amend or repeal;
- “notice” means notice in writing;
- “price” includes any charge or fee (however described);
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation;
- “subsidiary” has the meaning given by section 736 of the Companies Act 1985 (c. 6);
- “supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person; and
- “United Kingdom national” means an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
  - (c) a British protected person within the meaning of that Act.
- (2) For the purposes of this Part any two bodies corporate are interconnected if—
- (a) one of them is a body corporate of which the other is a subsidiary; or
  - (b) both of them are subsidiaries of one and the same body corporate;
- and in this Part “interconnected bodies corporate” shall be construed accordingly and “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.
- (4) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as he considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

### 130 Index of defined expressions

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
Action (and the taking of action)	Section 129(1)
Adverse public interest finding	Section 54(3)
Agreement	Section 129(1)
Anti-competitive outcome	Section 35(2)
Business (and carrying on business)	Section 129(1) and (3)
Change of circumstances	Section 129(1)
The Commission	Section 273
Community law	Section 129(1)
Consumer	Section 129(1)
Customer	Section 129(1)
Date of reference	Section 39(9)
The decision-making authority	Section 22(7)
Enactment	Section 129(1)
Enforcement order	Section 86(6)
Enforcement undertaking	Section 89(2)
Enterprise	Section 129(1)
Enterprises ceasing to be distinct	Section 26(1)
European Merger Regulations	Section 129(1)
Final determination of matter to which intervention notice relates	Section 43(4) and (5)
Final determination of matter to which special intervention notice relates	Section 60(4) and (5)
Final determination of reference under section 22 or 33	Section 79(1) and (2)
Goods	Section 129(1)

<i>Expression</i>	<i>Provision of this Act</i>
Interconnected bodies corporate (and a group of interconnected bodies corporate)	Section 129(2)
Intervention notice	Section 42(2)
Market for goods or services	Section 22(6)
Market in the United Kingdom	Section 22(6)
Merger notice	Section 96(2)
Modify	Section 129(1)
Notice	Section 129(1)
Notified arrangements	Section 96(6)
The OFT	Section 273
Orders under section 81	Section 81(6)
Orders under paragraph 2 of Schedule 7	Paragraph 2(7) of Schedule 7
The period for considering a merger notice	Sections 97 and 98
Price	Section 129(1)
Public interest consideration	Sections 42(3) and 67(9)
Public interest consideration being finalised	Section 42(8)
Publish	Section 129(4)
References under section 22, 33, 45 or 62	Sections 37(2), 49(1), 56(8) and 64(2)
Relevant customer benefit	Section 30
Relevant merger situation	Section 23 (as read with other enactments)
Reports of the Commission	Section 118(5)
Special intervention notice	Section 59(2)
Special merger situation	Section 59(3)
Subordinate legislation	Section 129(1)

<i>Expression</i>	<i>Provision of this Act</i>
Subsidiary	Section 129(1)
Supply (in relation to the supply of goods)	Section 129(1)
The supply of services (and a market for services etc.)	Section 128
The turnover in the United Kingdom of an enterprise	Section 28(2)
Undertakings under section 80	Section 80(6)
Undertakings under paragraph 1 of Schedule 7	Paragraph 1(7) of Schedule 7
United Kingdom national	Section 129(1)

#### PART 4

#### MARKET INVESTIGATIONS

#### CHAPTER 1

#### MARKET INVESTIGATION REFERENCES

#### *Making of references*

#### 131 Power of OFT to make references

- (1) The OFT may, subject to subsection (4), make a reference to the Commission if the OFT has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services 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.
- (2) For the purposes of this Part any reference to a feature of a market in the United Kingdom for goods or services shall be construed as a reference to –
  - (a) the structure of the market concerned or any aspect of that structure;
  - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
  - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- (3) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.
- (4) No reference shall be made under this section if –
  - (a) the making of the reference is prevented by section 156(1); or

- (b) a reference has been made under section 132 in relation to the same matter but has not been finally determined.
- (5) References in this Part to a market investigation reference being finally determined shall be construed in accordance with section 183(3) to (6).
- (6) In this Part –
  - “market in the United Kingdom” includes –
    - (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and
    - (b) any market which operates only in a part of the United Kingdom;
  - “market investigation reference” means a reference under this section or section 132;and references to a market for goods or services include references to a market for goods and services.

### **132 Ministerial power to make references**

- (1) Subsection (3) applies where, in relation to any goods or services, the appropriate Minister is not satisfied with a decision of the OFT not to make a reference under section 131.
- (2) Subsection (3) also applies where, in relation to any goods or services, the appropriate Minister –
  - (a) has brought to the attention of the OFT information which the appropriate Minister considers to be relevant to the question of whether the OFT should make a reference under section 131; but
  - (b) is not satisfied that the OFT will decide, within such period as the appropriate Minister considers to be reasonable, whether to make such a reference.
- (3) The appropriate Minister may, subject to subsection (4), make a reference to the Commission if he has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services 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.
- (4) No reference shall be made under this section if the making of the reference is prevented by section 156(1).
- (5) In this Part “the appropriate Minister” means –
  - (a) the Secretary of State; or
  - (b) the Secretary of State and one or more than one other Minister of the Crown acting jointly.

### **133 Contents of references**

- (1) A market investigation reference shall, in particular, specify –
  - (a) the enactment under which it is made;
  - (b) the date on which it is made; and

- (c) the description of goods or services to which the feature or combination of features concerned relates.
- (2) A market investigation reference may be framed so as to require the Commission to confine its investigation into the effects of features of markets in the United Kingdom for goods or services of a description specified in the reference to the effects of features of such of those markets as exist in connection with—
  - (a) a supply, of a description specified in the reference, of the goods or services concerned; or
  - (b) an acquisition, of a description specified in the reference, of the goods or services concerned.
- (3) A description of the kind mentioned in subsection (2)(a) or (b) may, in particular, be by reference to—
  - (a) the place where the goods or services are supplied or acquired; or
  - (b) the persons by or to whom they are supplied or by or from whom they are acquired.

*Determination of references*

**134 Questions to be decided on market investigation references**

- (1) The Commission shall, on a market investigation reference, decide whether any feature, or combination of features, of each 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.
- (2) For the purposes of this Part, in relation to a market investigation reference, there is an adverse effect on competition if any 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.
- (3) In subsections (1) and (2) “relevant market” means—
  - (a) in the case of subsection (2) so far as it applies in connection with a possible reference, a market in the United Kingdom—
    - (i) for goods or services of a description to be specified in the reference; and
    - (ii) which would not be excluded from investigation by virtue of section 133(2); and
  - (b) in any other case, a market in the United Kingdom—
    - (i) for goods or services of a description specified in the reference concerned; and
    - (ii) which is not excluded from investigation by virtue of section 133(2).
- (4) The Commission shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions—
  - (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as

- 
- it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (5) For the purposes of this Part, in relation to a market investigation reference, there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of—
- (a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or
- (b) less innovation in relation to such goods or services.
- (6) In deciding the questions mentioned in subsection (4), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (7) In deciding the questions mentioned in subsection (4), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.
- (8) For the purposes of this Part a benefit is a relevant customer benefit of a feature or features of a market if—
- (a) it is a benefit to customers or future customers in the form of—
- (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or
- (ii) greater innovation in relation to such goods or services; and
- (b) the Commission, the Secretary of State or (as the case may be) the OFT believes that—
- (i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
- (ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

### **135 Variation of market investigation references**

- (1) The OFT or (as the case may be) the appropriate Minister may at any time vary a market investigation reference made by it or (as the case may be) him.
- (2) The OFT or (as the case may be) the appropriate Minister shall consult the Commission before varying any such reference.
- (3) Subsection (2) shall not apply if the Commission has requested the variation concerned.

- (4) No variation under this section shall be capable of altering the period permitted by section 137 within which the report of the Commission under section 136 is to be prepared and published or (as the case may be) the period permitted by section 144 within which the report of the Commission under section 142 is to be prepared and published or given.

### **136 Investigations and reports on market investigation references**

- (1) The Commission shall prepare and publish a report on a market investigation reference within the period permitted by section 137.
- (2) The report shall, in particular, contain –
- (a) the decisions of the Commission on the questions which it is required to answer by virtue of section 134;
  - (b) its reasons for its decisions; and
  - (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.
- (4) The Commission shall, at the same time as a report under this section is published –
- (a) in the case of a reference under section 131, give it to the OFT; and
  - (b) in the case of a reference under section 132, give it to the appropriate Minister and give a copy of it to the OFT.
- (5) Where a reference has been made by the OFT under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as the report under this section is published, give a copy of it to the relevant sectoral regulator concerned.
- (6) Where a reference has been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as the report under this section is published, give a copy of it to the OFT.
- (7) In this Part “relevant sectoral enactment” means –
- (a) in relation to the Director General of Telecommunications, section 50 of the Telecommunications Act 1984 (c. 12);
  - (b) in relation to the Gas and Electricity Markets Authority, section 36A of the Gas Act 1986 (c. 44) or (as the case may be) section 43 of the Electricity Act 1989 (c. 29);
  - (c) in relation to the Director General of Water Services, section 31 of the Water Industry Act 1991 (c. 56);
  - (d) in relation to the Director General of Electricity Supply for Northern Ireland, article 46 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
  - (e) in relation to the Rail Regulator, section 67 of the Railways Act 1993 (c. 43);
  - (f) in relation to the Director General of Gas for Northern Ireland, article 23 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)); and



- (g) in relation to the Civil Aviation Authority, section 86 of the Transport Act 2000 (c. 38).
- (8) In this Part “relevant sectoral regulator” means the Director General of Telecommunications, the Gas and Electricity Markets Authority, the Director General of Water Services, the Director General of Electricity Supply for Northern Ireland, the Rail Regulator, the Director General of Gas for Northern Ireland or the Civil Aviation Authority.
- (9) The Secretary of State may by order modify subsection (7) or (8).

### **137 Time-limits for market investigations and reports**

- (1) The Commission shall prepare and publish its report under section 136 within the period of two years beginning with the date of the market investigation reference concerned.
- (2) Subsection (1) is subject to section 151(3) and (5).
- (3) The Secretary of State may by order amend subsection (1) so as to alter the period of two years mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.
- (4) No alteration shall be made by virtue of subsection (3) which results in the period for the time being mentioned in subsection (1) exceeding two years.
- (5) An order under subsection (3) shall not affect any period of time within which the Commission is under a duty to prepare and publish its report under section 136 in relation to a market investigation reference if the Commission is already under that duty in relation to that reference when the order is made.
- (6) Before making an order under subsection (3) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.
- (7) References in this Part to the date of a market investigation reference shall be construed as references to the date specified in the reference as the date on which it is made.

### **138 Duty to remedy adverse effects**

- (1) Subsection (2) applies where a report of the Commission has been prepared and published under section 136 within the period permitted by section 137 and contains the decision that there is one or more than one adverse effect on competition.
- (2) The Commission shall, in relation to each adverse effect on competition, take such action under section 159 or 161 as it considers to be reasonable and practicable—
  - (a) to remedy, mitigate or prevent the adverse effect on competition concerned; and
  - (b) to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effect on competition.
- (3) The decisions of the Commission under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 134(4) unless there has been a material change of circumstances since the preparation of the report or the Commission otherwise has a special reason for deciding differently.

- (4) In making a decision under subsection (2), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (5) In making a decision under subsection (2), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.
- (6) The Commission shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if –
  - (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.

## CHAPTER 2

### PUBLIC INTEREST CASES

#### *Intervention notices*

#### **139 Public interest intervention by Secretary of State**

- (1) The Secretary of State may give a notice to the Commission if –
  - (a) a market investigation reference has been made to the Commission;
  - (b) no more than four months has passed since the date of the reference;
  - (c) the reference is not finally determined; and
  - (d) the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the case.
- (2) The Secretary of State may give a notice to the OFT if –
  - (a) the OFT is considering whether to accept –
    - (i) an undertaking under section 154 instead of making a reference under section 131; or
    - (ii) an undertaking varying or superseding any such undertaking;
  - (b) the OFT has published a notice under section 155(1) or (4); and
  - (c) the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the case.
- (3) In this Part “intervention notice” means a notice under subsection (1) or (2).
- (4) No more than one intervention notice shall be given under subsection (1) in relation to the same market investigation reference and no more than one intervention notice shall be given under subsection (2) in relation to the same proposed undertaking or in relation to proposed undertakings which do not differ from each other in any material respect.
- (5) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 153 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.

- (6) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.
- (7) For the purposes of this Part a public interest consideration is finalised if—
  - (a) it is specified in section 153 otherwise than by virtue of an order under subsection (3) of that section; or
  - (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (6) of section 181 and within the period mentioned in that subsection.

*Intervention notices under section 139(1)*

**140 Intervention notices under section 139(1)**

- (1) An intervention notice under section 139(1) shall state—
  - (a) the market investigation reference concerned;
  - (b) the date of the market investigation reference concerned;
  - (c) the public interest consideration or considerations which are, or may be, relevant to the case; and
  - (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the case, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(1) and which is in force.
- (4) An intervention notice under section 139(1) shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.
- (5) For the purposes of subsection (4) a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter if—
  - (a) the period permitted by section 144 for the preparation of the report of the Commission under section 142 and for action to be taken in relation to it under section 143(1) or (3) has expired and no such report has been so prepared or no such action has been taken;
  - (b) the Commission decides under section 145(1) to terminate its investigation;
  - (c) the report of the Commission has been prepared under section 142 and published under section 143(1) within the period permitted by section 144;
  - (d) the Secretary of State fails to make and publish a decision under subsection (2) of section 146 within the period required by subsection (3) of that section;
  - (e) the Secretary of State decides under section 146(2) that no eligible public interest consideration is relevant;

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- (f) the Secretary of State decides under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
  - (g) the Secretary of State accepts an undertaking under section 159 or makes an order under section 161; or
  - (h) the Secretary of State decides to revoke the intervention notice concerned.
- (6) For the purposes of subsections (4) and (5) the time when a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter is—
- (a) in a case falling within subsection (5)(a) or (d), the expiry of the period concerned;
  - (b) in a case falling within subsection (5)(b), (e), (f) or (h), the making of the decision concerned;
  - (c) in a case falling within subsection (5)(c), the publication of the report concerned; and
  - (d) in a case falling within subsection (5)(g), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (7) In subsection (6)(d) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action under section 147(2) involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (5)(g) and (6)(d).

#### **141 Questions to be decided by Commission**

- (1) This section applies where an intervention notice under section 139(1) is in force in relation to a market investigation reference.
- (2) The Commission shall decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) 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.
- (3) The Commission shall, if it has decided that there is an adverse effect on competition, decide the following additional questions—
  - (a) whether action should be taken by the Secretary of State under section 147 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
  - (b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

- (4) The Commission shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148(1))—
  - (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
  - (b) whether the Commission should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (5) In deciding the questions mentioned in subsections (3) and (4), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (6) In deciding the questions mentioned in subsections (3) and (4), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.

#### **142 Investigations and reports by Commission**

- (1) Where an intervention notice under section 139(1) is in force in relation to a market investigation reference, the Commission shall prepare a report on the reference and take action in relation to it under section 143(1) or (3) within the period permitted by section 144.
- (2) The report shall, in particular, contain—
  - (a) the decisions of the Commission on the questions which it is required to answer by virtue of section 141;
  - (b) its reasons for its decisions; and
  - (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

#### **143 Publication etc. of reports of Commission**

- (1) The Commission shall publish a report under section 142 if it contains—
  - (a) the decision of the Commission that there is no adverse effect on competition; or
  - (b) the decisions of the Commission that there is one or more than one adverse effect on competition but, on the question mentioned in section 141(4)(a) and in relation to each adverse effect on competition, that no action should be taken by it.

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- (2) The Commission shall, at the same time as the report is published under subsection (1)–
    - (a) in the case of a reference under section 131, give it to the OFT; and
    - (b) in the case of a reference under section 132, give it to the appropriate Minister and give a copy of it to the OFT.
  - (3) Where a report under section 142 contains the decisions of the Commission that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it, the Commission shall give the report to the Secretary of State.
  - (4) The Secretary of State shall publish, no later than publication of his decision under section 146(2) in relation to the case, a report of the Commission given to him under subsection (3) and not required to be published by virtue of section 148(2).
  - (5) The Secretary of State shall, at the same time as a report of the Commission given to him under subsection (3) is published under subsection (4), give a copy of it–
    - (a) in the case of a reference under section 131, to the OFT; and
    - (b) in the case of a reference under section 132, to any other Minister of the Crown who made the reference and to the OFT.
  - (6) Where a reference has been made by the OFT under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the relevant authority shall, at the same time as the report under section 142 is published under subsection (1) or (4), give a copy of it to the relevant sectoral regulator concerned.
  - (7) Where a reference has been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the relevant authority shall, at the same time as the report under section 142 is published under subsection (1) or (4), give a copy of it to the OFT.
  - (8) In subsections (6) and (7) “the relevant authority” means –
    - (a) in the case of a report published under subsection (1), the Commission; and
    - (b) in the case of a report published under subsection (4), the Secretary of State.

#### **144 Time-limits for investigations and reports: Part 4**

- (1) The Commission shall, within the period of two years beginning with the date of the reference, prepare its report under section 142 and publish it under subsection (1) of section 143 or (as the case may be) give it to the Secretary of State under subsection (3) of that section.
- (2) The Secretary of State may by order amend subsection (1) so as to alter the period of two years mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.
- (3) No alteration shall be made by virtue of subsection (2) which results in the period for the time being mentioned in subsection (1) exceeding two years.

- (4) An order under subsection (2) shall not affect any period of time within which, in relation to a market investigation reference, the Commission is under a duty to prepare its report under section 142 and take action in relation to it under section 143(1) or (3) if the Commission is already under that duty in relation to that reference when the order is made.
- (5) Before making an order under subsection (2) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

#### **145 Restrictions where public interest considerations not finalised: Part 4**

- (1) The Commission shall terminate its investigation under section 142 if—
  - (a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
  - (b) no other public interest consideration is mentioned in the notice;
  - (c) at least 24 weeks has elapsed since the giving of the notice; and
  - (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.
- (2) Where the intervention notice concerned mentions a public interest consideration which is not finalised on the giving of the notice, the Commission shall not give its report under section 142 to the Secretary of State in accordance with section 143(3) unless the period of 24 weeks beginning with the giving of the intervention notice concerned has expired or the public interest consideration concerned has been finalised.
- (3) The Commission shall, in reporting on any of the questions mentioned in section 141(3), disregard any public interest consideration which has not been finalised before the giving of the report.
- (4) The Commission shall, in reporting on any of the questions mentioned in section 141(3), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.
- (5) Subsections (1) to (4) are without prejudice to the power of the Commission to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

#### **146 Decision of Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has received a report of the Commission which—
  - (a) has been prepared under section 142;
  - (b) contains the decisions that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it; and
  - (c) has been given to the Secretary of State as required by section 143(3).
- (2) The Secretary of State shall decide whether—

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- (a) any eligible public interest consideration is relevant; or
  - (b) any eligible public interest considerations are relevant;
- to any action which is mentioned in the report by virtue of section 141(4)(a) and (c) and which the Commission should take for the purpose of remedying, mitigating or preventing any adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted or may be expected to result from any adverse effect on competition.
- (3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the Commission under section 142.
  - (4) In this section “eligible public interest consideration” means a public interest consideration which—
    - (a) was mentioned in the intervention notice concerned; and
    - (b) was not disregarded by the Commission for the purposes of its report under section 142.

#### **147 Remedial action by Secretary of State**

- (1) Subsection (2) applies where the Secretary of State—
  - (a) has decided under subsection (2) of section 146 within the period required by subsection (3) of that section that an eligible public interest consideration is relevant as mentioned in subsection (2) of that section or eligible public interest considerations are so relevant; and
  - (b) has published his decision within the period required by subsection (3) of that section.
- (2) The Secretary of State may, in relation to any adverse effect on competition identified in the report concerned, take such action under section 159 or 161 as he considers to be—
  - (a) reasonable and practicable—
    - (i) to remedy, mitigate or prevent the adverse effect on competition concerned; or
    - (ii) to remedy, mitigate or prevent any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (b) appropriate in the light of the eligible public interest consideration concerned or (as the case may be) the eligible public interest considerations concerned.
- (3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to—
  - (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition; and
  - (b) the report of the Commission under section 142.
- (4) In having regard by virtue of subsection (3) to the report of the Commission under section 142, the Secretary of State shall not challenge the decision of the Commission contained in the report that there is one or more than one adverse effect on competition.



- (5) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.
- (6) The Secretary of State shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—
  - (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.
- (7) In this section “eligible public interest consideration” has the same meaning as in section 146.

#### **148 Reversion of the matter to the Commission**

- (1) If—
  - (a) the Secretary of State fails to make and publish his decision under subsection (2) of section 146 within the period required by subsection (3) of that section; or
  - (b) the Secretary of State decides that no eligible public interest consideration is relevant as mentioned in subsection (2) of that section;the Commission shall proceed under section 138 as if the report had been prepared and published under section 136 within the period permitted by section 137.
- (2) The Commission shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (1).
- (3) The Commission shall, at the same time as its report is published under subsection (2), give a copy of it—
  - (a) in the case of a reference under section 131, to the OFT; and
  - (b) in the case of a reference under section 132, to any Minister of the Crown who made the reference (other than the Secretary of State) and to the OFT.
- (4) Where a reference has been made by the OFT under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as its report is published under subsection (2), give a copy of it to the relevant sectoral regulator concerned.
- (5) Where a reference has been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as its report is published under subsection (2), give a copy of it to the OFT.
- (6) In relation to proceedings by virtue of subsection (1), the reference in section 138(3) to decisions of the Commission included in its report by virtue of section 134(4) shall be construed as a reference to decisions which were included in the report of the Commission by virtue of section 141(4).

- (7) Where the Commission, in proceeding by virtue of subsection (1), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141(4), it shall not so proceed without the consent of the Secretary of State.
- (8) The Secretary of State shall not withhold his consent under subsection (7) unless he believes that the proposed alternative way of proceeding will operate against the public interest.
- (9) For the purposes of subsection (8) a proposed alternative way of proceeding will operate against the public interest only if any eligible public interest consideration or considerations outweigh the considerations which have led the Commission to propose proceeding in that way.
- (10) In deciding whether to withhold his consent under subsection (7), the Secretary of State shall accept the Commission's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.
- (11) In this section "eligible public interest consideration" has the same meaning as in section 146.

*Intervention notices under section 139(2)*

**149 Intervention notices under section 139(2)**

- (1) An intervention notice under section 139(2) shall state—
  - (a) the proposed undertaking which may be accepted by the OFT;
  - (b) the notice under section 155(1) or (4);
  - (c) the public interest consideration or considerations which are, or may be, relevant to the case; and
  - (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the case, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(2) and which is in force.
- (4) An intervention notice under section 139(2) shall come into force when it is given and shall cease to be in force on the occurrence of any of the events mentioned in subsection (5).
- (5) The events are—
  - (a) the acceptance by the OFT with the consent of the Secretary of State of an undertaking which is the same as the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) or which does not differ from it in any material respect;
  - (b) the decision of the OFT to proceed neither with the proposed undertaking mentioned in the intervention notice by virtue of

- subsection (1)(a) nor a proposed undertaking which does not differ from it in any material respect; or
- (c) the decision of the Secretary of State to revoke the intervention notice concerned.

### **150 Power of veto of Secretary of State**

- (1) Where an intervention notice under section 139(2) is in force, the OFT shall not, without the consent of the Secretary of State, accept the proposed undertaking concerned or a proposed undertaking which does not differ from it in any material respect.
- (2) The Secretary of State shall withhold his consent if he believes that it is or may be the case that the proposed undertaking will, if accepted, operate against the public interest.
- (3) For the purposes of subsection (2) a proposed undertaking will, if accepted, operate against the public interest only if any public interest consideration which is mentioned in the intervention notice concerned and has been finalised, or any public interest considerations which are so mentioned and have been finalised, outweigh the considerations which have led the OFT to propose accepting the undertaking.
- (4) In making his decision under subsection (2) the Secretary of State shall accept the OFT's view of what undertakings, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be most appropriate.
- (5) Where a public interest consideration which is mentioned in the intervention notice concerned is not finalised on the giving of the notice, the Secretary of State shall not make his decision as to whether to give his consent under this section before –
  - (a) the end of the period of 24 weeks beginning with the giving of the intervention notice; or
  - (b) if earlier, the date on which the public interest consideration concerned has been finalised.
- (6) Subject to subsections (2) to (5), the Secretary of State shall not withhold his consent under this section.

### *Other*

### **151 Further interaction of intervention notices with general procedure**

- (1) Where an intervention notice under section 139(1) comes into force in relation to a market investigation reference, sections 134(1), (4), (6) and (7), 136(1) to (6), 137(1) to (6) and 138 shall cease to apply in relation to that reference.
- (2) Where the Secretary of State revokes an intervention notice which has been given under section 139(1), the Commission shall instead proceed under sections 134 and 136 to 138.
- (3) Where the Commission is proceeding by virtue of subsection (2), the period within which the Commission shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.

- (4) Where the Commission terminates its investigation under section 145(1), the Commission shall proceed under sections 134 and 136 to 138.
- (5) Where the Commission is proceeding by virtue of subsection (4), the period within which the Commission shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.
- (6) In determining the period of 20 days mentioned in subsection (3) or (5) no account shall be taken of—
  - (a) Saturday, Sunday, Good Friday and Christmas Day; and
  - (b) any day which is a bank holiday in England and Wales.

#### **152 Certain duties of OFT and Commission**

- (1) The OFT shall, in considering whether to make a reference under section 131, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 153 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.
- (2) The Commission shall, in investigating any reference made to it under section 131 or 132 within the previous four months, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 153 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.
- (3) The OFT and the Commission shall bring to the attention of the Secretary of State any representations about exercising his power under section 153(3) which have been made to the OFT or (as the case may be) the Commission.

#### **153 Specified considerations: Part 4**

- (1) The interests of national security are specified in this section.
- (2) In subsection (1) “national security” includes public security; and in this subsection “public security” has the same meaning as in article 21(3) of Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997.
- (3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.
- (4) An order under this section may apply in relation to cases under consideration by the OFT, by the Secretary of State, by the appropriate Minister (other than the Secretary of State acting alone) or by the Commission before the making of the order as well as cases under consideration on or after the making of the order.

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## CHAPTER 3

### ENFORCEMENT

#### *Undertakings and orders*

#### **154 Undertakings in lieu of market investigation references**

- (1) Subsection (2) applies if the OFT considers that it has the power to make a reference under section 131 and otherwise intends to make such a reference.
- (2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing –
  - (a) any adverse effect on competition concerned; or
  - (b) any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;accept, from such persons as it considers appropriate, undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (4) In proceeding under subsection (2), the OFT may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.
- (5) The OFT shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if –
  - (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.
- (6) An undertaking under this section –
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the OFT.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (8) This section is subject to sections 150 and 155.

#### **155 Undertakings in lieu: procedural requirements**

- (1) Before accepting an undertaking under section 154 (other than an undertaking under that section which varies an undertaking under that section but not in any material respect), the OFT shall –
  - (a) publish notice of the proposed undertaking; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.

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- (2) A notice under subsection (1) shall state –
    - (a) that the OFT proposes to accept the undertaking;
    - (b) the purpose and effect of the undertaking;
    - (c) the situation that the undertaking is seeking to deal with;
    - (d) any other facts which the OFT considers justify the acceptance of the undertaking;
    - (e) a means of gaining access to an accurate version of the proposed undertaking at all reasonable times; and
    - (f) the period (not less than 15 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed undertaking.
  - (3) The matters to be included in a notice under subsection (1) by virtue of subsection (2) shall, in particular, include –
    - (a) the terms of the reference under section 131 which the OFT considers that it has power to make and which it otherwise intends to make; and
    - (b) the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the OFT has identified.
  - (4) The OFT shall not accept the undertaking with modifications unless it –
    - (a) publishes notice of the proposed modifications; and
    - (b) considers any representations made in accordance with the notice and not withdrawn.
  - (5) A notice under subsection (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 subsection (4)) within which representations may be made in relation to the proposed modifications.
  - (6) If, after publishing notice under subsection (1) or (4), the OFT decides –
    - (a) not to accept the undertaking concerned; and
    - (b) not to proceed by virtue of subsection (8) or (9);it shall publish notice of that decision.
  - (7) As soon as practicable after accepting an undertaking to which this section applies, the OFT shall –
    - (a) serve a copy of the undertaking on any person by whom it is given; and
    - (b) publish the undertaking.
  - (8) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the OFT –
    - (a) has already published notice under subsection (1) but not subsection (4) in relation to the proposed undertaking; and
    - (b) considers that the modifications which are now being proposed are not material in any respect.
  - (9) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the OFT –
    - (a) has already published notice under subsections (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 subsection (4).
- (10) Paragraphs 6 to 8 (but not paragraph 9) of Schedule 10 (procedural requirements before terminating undertakings) shall apply in relation to the proposed release of undertakings under section 154 (other than in connection with accepting an undertaking under that section which varies or supersedes an undertaking under that section) as they apply in relation to the proposed release of undertakings under section 73.

#### **156 Effect of undertakings under section 154**

- (1) No market investigation reference shall be made by the OFT or the appropriate Minister in relation to any feature, or combination of features, of a market in the United Kingdom for goods or services if—
- (a) the OFT has accepted an undertaking or group of undertakings under section 154 within the previous 12 months; and
  - (b) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which the feature, or combination of features, relates.
- (2) Subsection (1) does not prevent the making of a market investigation reference if—
- (a) the OFT considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
  - (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the OFT which was false or misleading in a material respect.

#### **157 Interim undertakings: Part 4**

- (1) Subsection (2) applies where—
- (a) a market investigation reference has been made;
  - (b) a report has been published under section 136 within the period permitted by section 137 or (as the case may be) a report prepared under section 142 and given to the Secretary of State under section 143(3) within the period permitted by section 144 has been published; and
  - (c) the market investigation reference concerned is not finally determined.
- (2) The relevant authority may, for the purpose of preventing pre-emptive action, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.
- (3) An undertaking under this section—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the relevant authority.
- (4) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.

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- (5) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or releasing an undertaking under this section.
- (6) In this section and section 158 –
- “pre-emptive action” means action which might impede the taking of any action under section 138(2) or (as the case may be) 147(2) in relation to the market investigation reference concerned; and
- “the relevant authority” means –
- (a) where an intervention notice is in force in relation to the market investigation reference, the Secretary of State;
- (b) in any other case, the Commission.

#### **158 Interim orders: Part 4**

- (1) Subsection (2) applies where –
- (a) a market investigation reference has been made;
- (b) a report has been published under section 136 within the period permitted by section 137 or (as the case may be) a report prepared under section 142 and given to the Secretary of State under section 143(3) within the period permitted by section 144 has been published; and
- (c) the market investigation reference concerned is not finally determined.
- (2) The relevant authority may by order, for the purpose of preventing pre-emptive action –
- (a) prohibit or restrict the doing of things which the relevant authority 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) An order under this section –
- (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.
- (4) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.
- (5) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or revoking an order under this section.



**159 Final undertakings: Part 4**

- (1) The Commission may, in accordance with section 138, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) The Secretary of State may, in accordance with section 147, accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.
- (3) An undertaking under this section shall come into force when accepted.
- (4) An undertaking under subsection (1) or (2) may be varied or superseded by another undertaking under that subsection.
- (5) An undertaking under subsection (1) may be released by the Commission and an undertaking under subsection (2) may be released by the Secretary of State.
- (6) The Commission or (as the case may be) the Secretary of State shall, as soon as reasonably practicable, consider any representations received by it or (as the case may be) him in relation to varying or releasing an undertaking under this section.

**160 Order-making power where final undertakings not fulfilled: Part 4**

- (1) Subsection (2) applies where the relevant authority considers that –
  - (a) an undertaking accepted by the relevant authority under section 159 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by the relevant authority under that section, information which was false or misleading in a material respect was given to the relevant authority or the OFT by the person giving the undertaking before the relevant authority decided to accept the undertaking.
- (2) The relevant authority may, for any of the purposes mentioned in section 138(2) or (as the case may be) 147(2), make an order under this section.
- (3) Subsections (3) to (6) of section 138 or (as the case may be) 147 shall apply for the purposes of subsection (2) above as they apply for the purposes of that section.
- (4) An order under this section may contain –
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the relevant authority considers appropriate.
- (5) An order under this section –
  - (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.
- (6) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.
- (7) In this section “the relevant authority” means –

- (a) in the case of an undertaking accepted under section 159 by the Commission, the Commission; and
- (b) in the case of an undertaking accepted under that section by the Secretary of State, the Secretary of State.

**161 Final orders: Part 4**

- (1) The Commission may, in accordance with section 138, make an order under this section.
- (2) The Secretary of State may, in accordance with section 147, make an order under this section.
- (3) An order under this section may contain –
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the person making it considers appropriate.
- (4) An order under this section –
  - (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.
- (5) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

*Enforcement functions of OFT***162 Duty of OFT to monitor undertakings and orders: Part 4**

- (1) The OFT shall keep under review the carrying out of any enforcement undertaking or any enforcement order.
- (2) The OFT shall, in particular, from time to time consider –
  - (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
  - (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and –
    - (i) one or more of the parties to it can be released from it; or
    - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
  - (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The OFT shall give the Commission or (as the case may be) the Secretary of State such advice as it considers appropriate in relation to –
  - (a) any possible variation or release by the Commission or (as the case may be) the Secretary of State of an enforcement undertaking accepted by it or (as the case may be) him;
  - (b) any possible new enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State so as to supersede another enforcement undertaking given to the Commission or (as the case may be) the Secretary of State;

- (c) any possible variation or revocation by the Commission or (as the case may be) the Secretary of State of an enforcement order made by the Commission or (as the case may be) the Secretary of State;
  - (d) any possible enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State instead of an enforcement order or any possible enforcement order to be made by the Commission or (as the case may be) the Secretary of State instead of an enforcement undertaking; or
  - (e) the enforcement by virtue of section 167(6) to (8) of any enforcement undertaking or enforcement order.
- (4) The OFT shall take such action as it considers appropriate in relation to—
- (a) any possible variation or release by it of an undertaking accepted by it under section 154;
  - (b) any possible new undertaking to be accepted by it under section 154 so as to supersede another undertaking given to it under that section; or
  - (c) the enforcement by it by virtue of section 167(6) of any enforcement undertaking or enforcement order.
- (5) The OFT shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The OFT shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The OFT shall—
- (a) give any report prepared by it under subsection (6) to the Commission;
  - (b) give a copy of the report to the Secretary of State; and
  - (c) publish the report.
- (8) In this Part—
- “enforcement order” means an order made under section 158, 160 or 161; and
  - “enforcement undertaking” means an undertaking accepted under section 154, 157 or 159.

### **163 Further role of OFT in relation to undertakings and orders: Part 4**

- (1) Subsections (2) and (3) apply where the Commission or the Secretary of State (in this section “the relevant authority”) is considering whether to accept undertakings under section 157 or 159.
- (2) The relevant authority may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under section 157 or (as the case may be) 159.
- (3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT’s consultations within such period as the relevant authority may require.
- (4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under section 157 or (as the case may be) 159.

- (5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.
- (6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertakings) in a particular case, the OFT shall give such advice as it considers appropriate.

*Supplementary*

**164 Enforcement undertakings and orders under this Part: general provisions**

- (1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.
- (2) The following enactments in Part 3 shall apply in relation to enforcement orders under this Part as they apply in relation to enforcement orders under that Part—
  - (a) section 86(1) to (5) (enforcement orders: general provisions); and
  - (b) section 87 (power of directions conferred by enforcement order).
- (3) An enforcement order under section 160 or 161 or any explanatory material accompanying the order shall state—
  - (a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;
  - (b) the date on which the order comes into force;
  - (c) the possible consequences of not complying with the order; and
  - (d) the section of this Part under which a review can be sought in relation to the order.

**165 Procedural requirements for certain undertakings and orders: Part 4**

Schedule 10 (procedural requirements for certain undertakings and orders), other than paragraph 9 of that Schedule, shall apply in relation to undertakings under section 159 and orders under section 160 or 161 as it applies in relation to undertakings under section 82 and orders under section 83 or 84.

**166 Register of undertakings and orders: Part 4**

- (1) The OFT shall compile and maintain a register for the purposes of this Part.
- (2) The register shall be kept in such form as the OFT considers appropriate.
- (3) The OFT shall ensure that the following matters are entered in the register—
  - (a) the provisions of any enforcement undertaking accepted by virtue of this Part (whether by the OFT, the Commission, the Secretary of State or a relevant sectoral regulator);
  - (b) the provisions of any enforcement order made by virtue of this Part (whether by the Commission, the Secretary of State or a relevant sectoral regulator); and
  - (c) the details of any variation, release or revocation of such an undertaking or order.
- (4) The duty in subsection (3) does not extend to anything of which the OFT is unaware.

- (5) The Commission, the Secretary of State and any relevant sectoral regulator shall inform the OFT of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them or enforcement orders made by them.
- (6) The OFT shall ensure that the contents of the register are available to the public –
  - (a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and
  - (b) subject to such reasonable fees (if any) as the OFT may determine.
- (7) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

#### **167 Rights to enforce undertakings and orders under this Part**

- (1) This section applies to any enforcement undertaking or enforcement order.
- (2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.
- (3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.
- (4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.
- (6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the OFT for an injunction or for interdict or for any other appropriate relief or remedy.
- (7) Compliance with an undertaking accepted under section 157 or 159, or an order under section 158, 160 or 161, shall also be enforceable by civil proceedings brought by the relevant authority for an injunction or for interdict or for any other appropriate relief or remedy.
- (8) In subsection (7) “the relevant authority” means –
  - (a) in the case of an undertaking accepted by the Commission or an order made by the Commission, the Commission; and
  - (b) in the case of an undertaking accepted by the Secretary of State or an order made by the Secretary of State, the Secretary of State.
- (9) Subsections (6) to (8) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

## CHAPTER 4

## SUPPLEMENTARY

*Regulated markets***168 Regulated markets**

- (1) Subsection (2) applies where the Commission 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 Commission 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) modifying the conditions of a licence granted under section 7 of the Telecommunications Act 1984 (c. 12);
  - (b) modifying conditions in force under Part 4 of the Airports Act 1986 (c. 31) other than any conditions imposed or modified in pursuance of section 40(3) or (4) of that Act;
  - (c) modifying the conditions of a licence granted under section 7 or 7A 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);
  - (e) modifying networking arrangements (within the meaning given by section 39(1) of the Broadcasting Act 1990 (c. 42));
  - (f) modifying the conditions of a company’s appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56);
  - (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);
  - (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));
  - (l) modifying the conditions of a licence granted under section 11 of the Postal Services Act 2000 (c. 26); or
  - (m) modifying the conditions of a licence granted under section 5 of the Transport Act 2000 (c. 38).
- (4) In this section “relevant statutory functions” means –
  - (a) 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;
- (b) in relation to conditions in force under Part 4 of the Airports Act 1986 (c. 31) other than any conditions imposed or modified in pursuance of section 40(3) or (4) of that Act, the duties of the Civil Aviation Authority under section 39(2) and (3) of that Act;
  - (c) in relation to any licence granted under section 7 or 7A 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;
  - (e) in relation to any networking arrangements (within the meaning given by section 39(1) of the Broadcasting Act 1990 (c. 42)), the duties of the Independent Television Commission under section 2(2) of that Act;
  - (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 the Director General of Water Services under section 2 of that Act;
  - (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) where none of the conditions of the licence relate to consumer protection, the duties of the Rail Regulator under section 4 of that Act;
  - (i) 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 Rail Regulator 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 Rail Regulator 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 Strategic Rail Authority under section 207 of the Act of 2000;
  - (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;
  - (n) in relation to any licence granted under section 11 of the Postal Services Act 2000 (c. 26), the duties of the Postal Services Commission under sections 3 and 5 of that Act; and
  - (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.

(5) In this section “sectoral regulator” means –

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- (a) the Civil Aviation Authority;
  - (b) the Director General of Electricity Supply for Northern Ireland;
  - (c) the Director General of Gas for Northern Ireland;
  - (d) the Director General of Telecommunications;
  - (e) the Director General of Water Services;
  - (f) the Gas and Electricity Markets Authority;
  - (g) the Independent Television Commission;
  - (h) the Postal Services Commission;
  - (i) the Rail Regulator; or
  - (j) the Strategic Rail Authority.
- (6) Subsection (7) applies where the Commission or the Secretary of State is considering for the purposes of this Part whether modifying the conditions of a licence granted under section 7 or 7A 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 Commission 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.

*Consultation, information and publicity*

**169 Certain duties of relevant authorities to consult: Part 4**

- (1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to have a substantial impact on the interests of any person.
- (2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.
- (3) In consulting the person concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.
- (4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—
  - (a) any restrictions imposed by any timetable for making the decision; and
  - (b) any need to keep what is proposed, or the reasons for it, confidential.
- (5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.
- (6) In this section—



“the relevant authority” means the OFT, the appropriate Minister or the Commission; and

“relevant decision” means –

- (a) in the case of the OFT, any decision by the OFT –
  - (i) as to whether to make a reference under section 131 or accept undertakings under section 154 instead of making such a reference; or
  - (ii) to vary under section 135 such a reference;
- (b) in the case of the appropriate Minister, any decision by the appropriate Minister –
  - (i) as to whether to make a reference under section 132; or
  - (ii) to vary under section 135 such a reference; and
- (c) in the case of the Commission, any decision on the questions mentioned in section 134 or 141.

#### 170 General information duties

- (1) The OFT shall give the Commission –
  - (a) such information in its possession as the Commission may reasonably require to enable the Commission to carry out its functions under this Part; and
  - (b) any other assistance which the Commission may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the OFT to give.
- (2) The OFT shall give the Commission any information in its possession which has not been requested by the Commission but which, in the opinion of the OFT, would be appropriate to give to the Commission for the purpose of assisting it in carrying out its functions under this Part.
- (3) The OFT and the Commission shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone –
  - (a) such information in their possession as the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require to enable him to carry out his functions under this Part; and
  - (b) any other assistance which the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the OFT or (as the case may be) the Commission to give.
- (4) The OFT shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone any information in its possession which has not been requested by the Secretary of State or (as the case may be) the appropriate Minister concerned but which, in the opinion of the OFT, would be appropriate to give to the Secretary of State or (as the case may be) the appropriate Minister concerned for the purpose of assisting him in carrying out his functions under this Part.
- (5) The Commission shall have regard to any information given to it under subsection (1) or (2); and the Secretary of State or (as the case may be) the appropriate Minister concerned shall have regard to any information given to him under subsection (3) or (4).

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- (6) Any direction given under subsection (3)–
- (a) shall be in writing; and
  - (b) may be varied or revoked by a subsequent direction.

#### **171 Advice and information: Part 4**

- (1) As soon as reasonably practicable after the passing of this Act, the OFT shall prepare and publish general advice and information about the making of references by it under section 131.
- (2) The OFT may at any time publish revised, or new, advice or information.
- (3) As soon as reasonably practicable after the passing of this Act, the Commission shall prepare and publish general advice and information about the consideration by it of market investigation references and the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.
- (4) The Commission may at any time publish revised, or new, advice or information.
- (5) Advice and information published under this section shall be prepared with a view to–
- (a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the OFT or (as the case may be) the Commission expects such provisions to operate.
- (6) Advice and information published by virtue of subsection (1) or (3) shall include such advice and information about the effect of Community law, and anything done under or in accordance with it, on the provisions of this Part as the OFT or (as the case may be) the Commission considers appropriate.
- (7) Advice (or information) published by virtue of subsection (1) or (3) may include advice (or information) about the factors which the OFT or (as the case may be) the Commission may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (8) Any advice or information published by the OFT or the Commission under this section shall be published in such manner as the OFT or (as the case may be) the Commission considers appropriate.
- (9) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.
- (10) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.
- (11) In this section “Community law” means –
- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and
  - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties.

#### **172 Further publicity requirements: Part 4**

- (1) The OFT shall publish –

- (a) any reference made by it under section 131;
  - (b) any variation made by it under section 135 of a reference under section 131;
  - (c) any decision of a kind mentioned in section 149(5)(b); and
  - (d) such information as it considers appropriate about any decision made by it under section 152(1) to bring a case to the attention of the Secretary of State.
- (2) The Commission shall publish—
- (a) any decision made by it under section 138(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
  - (b) any decision made by it that there has been a material change of circumstances as mentioned in section 138(3) or there is another special reason as mentioned in that section;
  - (c) any termination under section 145(1) of an investigation by it;
  - (d) such information as it considers appropriate about any decision made by it under section 152(2) to bring a case to the attention of the Secretary of State;
  - (e) any enforcement undertaking accepted by it under section 157;
  - (f) any enforcement order made by it under section 158; and
  - (g) any variation, release or revocation of such an undertaking or order.
- (3) The Secretary of State shall publish—
- (a) any reference made by him under section 132;
  - (b) any variation made by him under section 135 of a reference under section 132;
  - (c) any intervention notice given by him;
  - (d) any decision made by him to revoke such a notice;
  - (e) any decision made by him under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
  - (f) any enforcement undertaking accepted by him under section 157;
  - (g) any variation or release of such an undertaking; and
  - (h) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (4) The appropriate Minister (other than the Secretary of State acting alone) shall publish—
- (a) any reference made by him under section 132;
  - (b) any variation made by him under section 135 of a reference under section 132; and
  - (c) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (5) Where any person is under an obligation by virtue of subsection (1), (2), (3) or (4) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (6) and (7), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (6) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.

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- (7) Subsections (5) and (6) shall not apply in relation to any case falling within subsection (1)(d) or (2)(d).
- (8) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 146(2); or
  - (b) any decision to make an order under section 153(3) or vary or revoke such an order.
- (9) Such reasons may be published after—
- (a) in the case of subsection (8)(a), the publication of the decision concerned; and
  - (b) in the case of subsection (8)(b), the making of the order or of the variation or revocation;
- if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.
- (10) Where the Secretary of State has decided under section 147(2) to accept an undertaking under section 159 or to make an order under section 161, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the Commission's report under section 142, before each House of Parliament.

### **173 Defamation: Part 4**

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, by the Secretary of State, by the appropriate Minister (other than the Secretary of State acting alone) or by the Commission in the exercise of any of their functions under this Part.

#### *Investigation powers*

### **174 Investigation powers of OFT**

- (1) The OFT may exercise any of the powers in subsections (3) to (5) for the purpose of assisting it in deciding whether to make a reference under section 131 or to accept undertakings under section 154 instead of making such a reference.
- (2) The OFT shall not exercise any of the powers in subsections (3) to (5) for the purpose of assisting it as mentioned in subsection (1) unless it already believes that it has power to make such a reference.
- (3) The OFT may give notice to any person requiring him—
- (a) to attend at a time and place specified in the notice; and
  - (b) to give evidence to the OFT or a person nominated by the OFT for the purpose.
- (4) The OFT may give notice to any person requiring him—
- (a) to produce any documents which—
    - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
    - (ii) are in that person's custody or under his control; and

- (b) to produce them at a time and place so specified and to a person so specified.
- (5) The OFT may give notice to any person who carries on any business requiring him—
  - (a) to supply to the OFT such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (6) A notice under this section shall include information about the possible consequences of not complying with the notice.
- (7) The person to whom any document is produced in accordance with a notice under this section may, for the purpose mentioned in subsection (1), copy the document so produced.
- (8) No person shall be required under this section—
  - (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
  - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (9) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.
- (10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (11) In this section “the court” means—
  - (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.

#### **175 Enforcement of powers under section 174: offences**

- (1) A person commits an offence if he, intentionally and without reasonable excuse, fails to comply with any requirement of a notice under section 174.
- (2) A person commits an offence if he intentionally and without reasonable excuse alters, suppresses or destroys any document which he has been required to produce by a notice under section 174.
- (3) A person who commits an offence under subsection (1) or (2) 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.
- (4) A person commits an offence if he intentionally obstructs or delays—
  - (a) the OFT in the exercise of its powers under section 174; or
  - (b) any person in the exercise of his powers under subsection (7) of that section.
- (5) A person who commits an offence under subsection (4) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **176 Investigation powers of the Commission**

- (1) The following sections in Part 3 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under this Part 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 “section 50 or 65, given” there were substituted “section 142, published or given under section 143(1) or (3)”; and
  - (b) for the words “(or given)”, in both places where they appear, there were substituted “(or published or given)”.

### *Reports*

### **177 Excisions from reports: Part 4**

- (1) Subsection (2) applies where the Secretary of State is under a duty to publish a report of the Commission under section 142.
- (2) The Secretary of State may exclude a matter from the report if he considers that publication of the matter would be inappropriate.
- (3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.
- (4) The Commission shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).
- (5) References in sections 136(4) to (6), 143(2) and (5) to (7), 148(3) to (5) and 172(10) to the giving or laying of a report of the Commission shall be construed as references to the giving or laying of the report as published.

#### **178 Minority reports of Commission: Part 4**

- (1) Subsection (2) applies where, on a market investigation reference, a member of a group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41), disagrees with any decisions contained in the report of the Commission under this Part as the decisions of the Commission.
- (2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

*Other*

#### **179 Review of decisions under Part 4**

- (1) Any person aggrieved by a decision of the OFT, the appropriate Minister, the Secretary of State or the Commission in connection with a reference or possible reference under this Part may apply to the Competition Appeal Tribunal for a review of that decision.
- (2) For this purpose “decision” –
  - (a) does not include a decision to impose a penalty under section 110(1) or (3) as applied by section 176; but
  - (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.
- (3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.
- (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Competition Appeal Tribunal may –
  - (a) dismiss the application or quash the whole or part of the decision to which it relates; and
  - (b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.
- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section –
  - “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and
  - “Tribunal rules” has the meaning given by section 15(1).

**180 Offences**

- (1) Sections 117 (false or misleading information) and 125 (offences by bodies corporate) shall apply, with the modifications mentioned in subsection (2) below, for the purposes of this Part as they apply for the purposes of Part 3.
- (2) Section 117 shall, in its application by virtue of subsection (1) above, have effect as if references to the Secretary of State included references to the appropriate Minister so far as he is not the Secretary of State acting alone.

**181 Orders under Part 4**

- (1) Any power of the Secretary of State to make an order under this Part shall be exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order under this Part—
  - (a) may be exercised so as to make different provision for different cases or different purposes;
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) The power of the Secretary of State under section 136(9), 137(3), 144(2), 153(3) or 168(8) as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (4) An order made by the Secretary of State under section 137(3), 144(2), 158, 160 or 161, or under section 111(4) or (6) or 114(3)(b) or (4)(b) as applied by section 176, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) No order shall be made by the Secretary of State under section 136(9) or 168(8), or section 128(6) as applied by section 183(2), unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) An order made by the Secretary of State under section 153(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.
- (7) In calculating the period of 28 days mentioned in subsection (6), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If an order made by the Secretary of State ceases to have effect by virtue of subsection (6), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.
- (9) If, apart from this subsection, an order made by the Secretary of State under section 153(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (10) References in this section to an order made under this Part include references to an order made under section 111(4) or (6) or 114(3)(b) or (4)(b) as applied by



section 176 and an order made under section 128(6) as applied by section 183(2).

#### **182 Service of documents: Part 4**

Section 126 shall apply for the purposes of this Part as it applies for the purposes of Part 3.

#### **183 Interpretation: Part 4**

- (1) In this Part, unless the context otherwise requires –
- “action” includes omission; and references to the taking of action include references to refraining from action;
  - “business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;
  - “change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;
  - “consumer” means any person who is –
    - (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
    - (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;and who does not receive or seek to receive the goods or services in the course of a business carried on by him;
  - “customer” includes a customer who is not a consumer;
  - “enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;
  - “goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;
  - “Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom and includes the Treasury;
  - “modify” includes amend or repeal;
  - “notice” means notice in writing;
  - “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation; and
  - “supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person.
- (2) Sections 127(1)(b) and (4) to (6) and 128 shall apply for the purposes of this Part as they apply for the purposes of Part 3.
- (3) For the purposes of this Part a market investigation reference is finally determined if –

- 
- (a) where no intervention notice under section 139(1) has been given in relation to it—
- (i) the period permitted by section 137 for preparing and publishing a report under section 136 has expired and no such report has been prepared and published;
  - (ii) such a report has been prepared and published within the period permitted by section 137 and contains the decision that there is no adverse effect on competition;
  - (iii) the Commission has decided under section 138(2) neither to accept undertakings under section 159 nor to make an order under section 161; or
  - (iv) the Commission has accepted an undertaking under section 159 or made an order under section 161;
- (b) where an intervention notice under section 139(1) has been given in relation to it—
- (i) the period permitted by section 144 for the preparation of the report of the Commission under section 142 and for action to be taken in relation to it under section 143(1) or (3) has expired while the intervention notice is still in force and no such report has been so prepared or no such action has been taken;
  - (ii) the Commission has terminated under section 145(1) its investigation and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);
  - (iii) the report of the Commission has been prepared under section 142 and published under section 143(1) within the period permitted by section 144;
  - (iv) the intervention notice was revoked and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);
  - (v) the Secretary of State has failed to make and publish a decision under subsection (2) of section 146 within the period permitted by subsection (3) of that section and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);
  - (vi) the Secretary of State has decided under section 146(2) that no eligible public interest consideration is relevant and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);
  - (vii) the Secretary of State has decided under 146(2) that a public interest consideration is relevant but has decided under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161; or
  - (viii) the Secretary of State has decided under section 146(2) that a public interest consideration is relevant and has accepted an undertaking under section 159 or made an order under section 161.
- (4) For the purposes of this Part the time when a market investigation reference is finally determined is—
- (a) in a case falling within subsection (3)(a)(i) or (b)(i), the expiry of the time concerned;

- (b) in a case falling within subsection (3)(a)(ii) or (b)(iii), the publication of the report;
  - (c) in a case falling within subsection (3)(a)(iv) or (b)(viii), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned; and
  - (d) in any other case, the making of the decision or last decision concerned or the taking of the action concerned.
- (5) The references in subsection (4) to subsections (3)(a)(i), (ii) and (iv) include those enactments as applied by subsection (3)(b)(ii), (iv), (v) or (vi).
- (6) In subsection (4)(c) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action concerned involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (3)(a)(iv) and (b)(viii) and (4)(c).
- (7) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as that person considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

#### 184 Index of defined expressions: Part 4

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
Action (and the taking of action)	Section 183(1)
Adverse effect on competition	Section 134(2)
Appropriate Minister	Section 132(5)
Business	Section 183(1)
Change of circumstances	Section 183(1)
The Commission	Section 273
Consumer	Section 183(1)
Customer	Section 183(1)
Date of market investigation reference	Section 137(7)

<i>Expression</i>	<i>Provision of this Act</i>
Detrimental effect on customers	Section 134(5)
Enactment	Section 183(1)
Enforcement order	Section 162(8)
Enforcement undertaking	Section 162(8)
Feature of a market	Section 131(2)
Final determination of market investigation reference	Section 183(3) to (6)
Goods	Section 183(1)
Intervention notice	Section 139(3)
Market for goods or services	Section 131(6)
Market in the United Kingdom	Section 131(6)
Market investigation reference	Section 131(6)
Minister of the Crown	Section 183(1)
Modify	Section 183(1)
Notice	Section 183(1)
The OFT	Section 273
Public interest consideration	Section 139(5)
Public interest consideration being finalised	Section 139(7)
Publish	Section 183(7)
Relevant customer benefit	Section 134(8)
Relevant sectoral enactment	Section 136(7)
Relevant sectoral regulator	Section 136(8)
Reports of the Commission	Section 177(5)
Subordinate legislation	Section 183(1)

<i>Expression</i>	<i>Provision of this Act</i>
Supply (in relation to the supply of goods)	Section 183(1)
The supply of services (and a market for services etc.)	Section 183(2)

## PART 5

### THE COMPETITION COMMISSION

#### 185 The Commission

Schedule 11 (which amends provisions relating to the constitution and powers of the Commission under Schedule 7 to the 1998 Act) has effect.

#### 186 Annual report of Commission

After paragraph 12 of Schedule 7 to the 1998 Act (the Competition Commission) there is inserted –

*“Annual reports*

- 12A (1) The Commission shall make to the Secretary of State a report for each financial year on its activities during the year.
- (2) The annual report must be made before the end of August next following the financial year to which it relates.
- (3) The Secretary of State shall lay a copy of the annual report before Parliament and arrange for the report to be published.”

#### 187 Commission rules of procedure

- (1) In section 45(7) of the 1998 Act (the Competition Commission) for the words “Schedule 7 makes” there shall be substituted “Schedules 7 and 7A make”.
- (2) In paragraph 19 of Schedule 7 to that Act, after sub-paragraph (4), there shall be inserted –
  - “(5) This paragraph does not apply to groups for which rules must be made under paragraph 19A.”
- (3) After paragraph 19 of that Schedule to that Act there shall be inserted –
  - “19A(1) The Chairman must make rules of procedure in relation to merger reference groups, market reference groups and special reference groups.
  - (2) Schedule 7A makes further provision about rules made under this paragraph but is not to be taken as restricting the Chairman’s powers under this paragraph.

- (3) The Chairman must publish rules made under this paragraph in such manner as he considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (4) The Chairman must consult the members of the Commission and such other persons as he considers appropriate before making rules under this paragraph.
- (5) Rules under this paragraph may –
  - (a) make different provision for different cases or different purposes;
  - (b) be varied or revoked by subsequent rules made under this paragraph.
- (6) Subject to rules made under this paragraph, each merger reference group, market reference group and special reference group may determine its own procedure.
- (7) In determining how to proceed in accordance with rules made under this paragraph and in determining its procedure under subparagraph (6), a group must have regard to any guidance issued by the Chairman.
- (8) Before issuing any guidance for the purposes of this paragraph the Chairman shall consult the members of the Commission and such other persons as he considers appropriate.
- (9) In this paragraph and in Schedule 7A –
  - “market reference group” means any group constituted 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);
  - “merger reference group” means any group constituted 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 Enterprise Act 2002; and
  - “special reference group” means any group constituted in connection with a reference or (in the case of the Financial Services and Markets Act 2000 (c. 8)) an investigation under –
    - (a) section 11 of the Competition Act 1980 (c. 21);
    - (b) section 13 of the Telecommunications Act 1984 (c. 12);
    - (c) section 43 of the Airports Act 1986 (c. 31);
    - (d) section 24 or 41E of the Gas Act 1986 (c. 44);
    - (e) section 12 or 56C of the Electricity Act 1989 (c. 29);
    - (f) Schedule 4 to the Broadcasting Act 1990 (c. 42);
    - (g) section 12 or 14 of the Water Industry Act 1991 (c. 56);
    - (h) article 15 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
    - (i) section 13 of, or Schedule 4A to, the Railways Act 1993 (c. 43);
    - (j) article 34 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1));

- (k) article 15 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
  - (l) section 15 of the Postal Services Act 2000 (c. 26);
  - (m) section 162 or 306 of the Financial Services and Markets Act 2000 (c. 8); or
  - (n) section 12 of the Transport Act 2000 (c. 38).”
- (4) After Schedule 7 to that Act there shall be inserted, as Schedule 7A, the Schedule set out in Schedule 12 to this Act.

## PART 6

### CARTEL OFFENCE

#### *Cartel offence*

#### 188 Cartel offence

- (1) An individual is guilty of an offence if he dishonestly agrees with one or more other persons to make or implement, or to cause to be made or implemented, arrangements of the following kind relating to at least two undertakings (A and B).
- (2) The arrangements must be ones which, if operating as the parties to the agreement intend, would –
- (a) directly or indirectly fix a price for the supply by A in the United Kingdom (otherwise than to B) of a product or service,
  - (b) limit or prevent supply by A in the United Kingdom of a product or service,
  - (c) limit or prevent production by A in the United Kingdom of a product,
  - (d) divide between A and B the supply in the United Kingdom of a product or service to a customer or customers,
  - (e) divide between A and B customers for the supply in the United Kingdom of a product or service, or
  - (f) be bid-rigging arrangements.
- (3) Unless subsection (2)(d), (e) or (f) applies, the arrangements must also be ones which, if operating as the parties to the agreement intend, would –
- (a) directly or indirectly fix a price for the supply by B in the United Kingdom (otherwise than to A) of a product or service,
  - (b) limit or prevent supply by B in the United Kingdom of a product or service, or
  - (c) limit or prevent production by B in the United Kingdom of a product.
- (4) In subsections (2)(a) to (d) and (3), references to supply or production are to supply or production in the appropriate circumstances (for which see section 189).
- (5) “Bid-rigging arrangements” are arrangements under which, in response to a request for bids for the supply of a product or service in the United Kingdom, or for the production of a product in the United Kingdom –
- (a) A but not B may make a bid, or
  - (b) A and B may each make a bid but, in one case or both, only a bid arrived at in accordance with the arrangements.

- (6) But arrangements are not bid-rigging arrangements if, under them, the person requesting bids would be informed of them at or before the time when a bid is made.
- (7) “Undertaking” has the same meaning as in Part 1 of the 1998 Act.

### **189 Cartel offence: supplementary**

- (1) For section 188(2)(a), the appropriate circumstances are that A’s supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by B in the United Kingdom.
- (2) For section 188(2)(b), the appropriate circumstances are that A’s supply of the product or service would be at a level in the supply chain—
  - (a) at which the product or service would at the same time be supplied by B in the United Kingdom, or
  - (b) at which supply by B in the United Kingdom of the product or service would be limited or prevented by the arrangements.
- (3) For section 188(2)(c), the appropriate circumstances are that A’s production of the product would be at a level in the production chain—
  - (a) at which the product would at the same time be produced by B in the United Kingdom, or
  - (b) at which production by B in the United Kingdom of the product would be limited or prevented by the arrangements.
- (4) For section 188(2)(d), the appropriate circumstances are that A’s supply of the product or service would be at the same level in the supply chain as B’s.
- (5) For section 188(3)(a), the appropriate circumstances are that B’s supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by A in the United Kingdom.
- (6) For section 188(3)(b), the appropriate circumstances are that B’s supply of the product or service would be at a level in the supply chain—
  - (a) at which the product or service would at the same time be supplied by A in the United Kingdom, or
  - (b) at which supply by A in the United Kingdom of the product or service would be limited or prevented by the arrangements.
- (7) For section 188(3)(c), the appropriate circumstances are that B’s production of the product would be at a level in the production chain—
  - (a) at which the product would at the same time be produced by A in the United Kingdom, or
  - (b) at which production by A in the United Kingdom of the product would be limited or prevented by the arrangements.

### **190 Cartel offence: penalty and prosecution**

- (1) A person guilty of an offence under section 188 is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.



- (2) In England and Wales and Northern Ireland, proceedings for an offence under section 188 may be instituted only –
  - (a) by the Director of the Serious Fraud Office, or
  - (b) by or with the consent of the OFT.
- (3) No proceedings may be brought for an offence under section 188 in respect of an agreement outside the United Kingdom, unless it has been implemented in whole or in part in the United Kingdom.
- (4) Where, for the purpose of the investigation or prosecution of offences under section 188, the OFT gives a person written notice under this subsection, no proceedings for an offence under section 188 that falls within a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.

### **191 Extradition**

The offences to which an Order in Council under section 2 of the Extradition Act 1870 (c. 52) (arrangements with foreign states) can apply include –

- (a) an offence under section 188,
- (b) conspiracy to commit such an offence, and
- (c) attempt to commit such an offence.

#### *Criminal investigations by OFT*

### **192 Investigation of offences under section 188**

- (1) The OFT may conduct an investigation if there are reasonable grounds for suspecting that an offence under section 188 has been committed.
- (2) The powers of the OFT under sections 193 and 194 are exercisable, but only for the purposes of an investigation under subsection (1), in any case where it appears to the OFT that there is good reason to exercise them for the purpose of investigating the affairs, or any aspect of the affairs, of any person (“the person under investigation”).

### **193 Powers when conducting an investigation**

- (1) The OFT may by notice in writing require the person under investigation, or any other person who it has reason to believe has relevant information, to answer questions, or otherwise provide information, with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.
- (2) The OFT may by notice in writing require the person under investigation, or any other person, to produce, at a specified place and either at a specified time or forthwith, specified documents, or documents of a specified description, which appear to the OFT to relate to any matter relevant to the investigation.
- (3) If any such documents are produced, the OFT may –
  - (a) take copies or extracts from them;
  - (b) require the person producing them to provide an explanation of any of them.

- (4) If any such documents are not produced, the OFT may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (5) A notice under subsection (1) or (2) must indicate—
  - (a) the subject matter and purpose of the investigation; and
  - (b) the nature of the offences created by section 201.

#### **194 Power to enter premises under a warrant**

- (1) On an application made by the OFT to the High Court, or, in Scotland, by the procurator fiscal to the sheriff, in accordance with rules of court, a judge or the sheriff may issue a warrant if he is satisfied that there are reasonable grounds for believing—
  - (a) that there are on any premises documents which the OFT has power under section 193 to require to be produced for the purposes of an investigation; and
  - (b) that—
    - (i) a person has failed to comply with a requirement under that section to produce the documents;
    - (ii) it is not practicable to serve a notice under that section in relation to them; or
    - (iii) the service of such a notice in relation to them might seriously prejudice the investigation.
- (2) A warrant under this section shall authorise a named officer of the OFT, and any other officers of the OFT whom the OFT has authorised in writing to accompany the named officer—
  - (a) to enter the premises, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and—
    - (i) take possession of any documents appearing to be of the relevant kind, or
    - (ii) take, in relation to any documents appearing to be of the relevant kind, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (d) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) Documents are of the relevant kind if they are of a kind in respect of which the application under subsection (1) was granted.
- (4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

- (5) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 of that Act applies), after paragraph 73 there is inserted –

*“Enterprise Act 2002*

73A. The power of seizure conferred by section 194(2) of the Enterprise Act 2002 (seizure of documents for the purposes of an investigation under section 192(1) of that Act).”

### **195 Exercise of powers by authorised person**

- (1) The OFT may authorise any competent person who is not an officer of the OFT to exercise on its behalf all or any of the powers conferred by section 193 or 194.
- (2) No such authority may be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.
- (3) No person is bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under this section unless he has, if required to do so, produced evidence of his authority.

### **196 Privileged information etc.**

- (1) A person may not under section 193 or 194 be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.
- (2) A person may not under section 193 or 194 be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business unless –
  - (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
  - (b) the OFT has authorised the making of the requirement.
- (3) In the application of this section to Scotland, the reference in subsection (1) –
  - (a) to proceedings in the High Court is to be read as a reference to legal proceedings generally; and
  - (b) to an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement by virtue of any rule of law whereby –
    - (i) communications between a professional legal adviser and his client, or
    - (ii) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings, are in such proceedings protected from disclosure on the ground of confidentiality.

### **197 Restriction on use of statements in court**

- (1) A statement by a person in response to a requirement imposed by virtue of section 193 or 194 may only be used in evidence against him –
  - (a) on a prosecution for an offence under section 201(2); or

- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.
- (2) However, the statement may not be used against that person by virtue of paragraph (b) of subsection (1) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.

## 198 Use of statements obtained under Competition Act 1998

In the 1998 Act, after section 30 there is inserted –

### “30A Use of statements in prosecution

A statement made by a person in response to a requirement imposed by virtue of any of sections 26 to 28 may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings –

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.”

## 199 Surveillance powers

- (1) The Regulation of Investigatory Powers Act 2000 (c. 23) is amended as follows.
- (2) In section 32 (authorisation of intrusive surveillance) –
  - (a) after subsection (3) there is inserted –
    - “(3A) In the case of an authorisation granted by the chairman of the OFT, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002 (cartel offence).”;
  - (b) in subsection (6) after paragraph (m) there is inserted “; and
    - (n) the chairman of the OFT.”
- (3) In section 33 (rules for grant of authorisations) after subsection (4) there is inserted –
  - “(4A) The chairman of the OFT shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the OFT.”
- (4) In subsection (5)(a) of that section, after “officer” there is inserted “or the chairman or an officer of the OFT”.
- (5) In section 34 (grant of authorisation in the senior officer’s absence) –
  - (a) in subsection (1)(a), after “or by” there is inserted “an officer of the OFT or”;
  - (b) in subsection (2)(a), after “may be,” there is inserted “as chairman of the OFT or”;
  - (c) in subsection (4), after paragraph (l) there is inserted –

- “(m) a person is entitled to act for the chairman of the OFT if he is an officer of the OFT designated by it for the purposes of this paragraph as a person entitled so to act in an urgent case.”
- (6) In section 35 (notification of authorisations for intrusive surveillance)—
- (a) in subsections (1) and (10), for “or customs” there is substituted “, customs or OFT”;
  - (b) in subsection (10), after paragraph (b) there is inserted—
    - “(ba) the chairman of the OFT; or”;
  - (c) in paragraph (c) of that subsection, at the end there is inserted “or for a person falling within paragraph (ba).”
- (7) In section 36 (approval required for authorisations to take effect)—
- (a) in subsection (1), after paragraph (d) there is inserted “; or
    - (e) an officer of the OFT.”;
  - (b) in subsection (6), after paragraph (g) there is inserted “; and
    - (h) where the authorisation was granted by the chairman of the OFT or a person entitled to act for him by virtue of section 34(4)(m), that chairman.”
- (8) In section 37 (quashing of police and customs authorisations etc.) in subsection (1), after paragraph (d) there is inserted “; or
  - (e) an officer of the OFT.”
- (9) In section 40 (information to be provided to Surveillance Commissioners) after paragraph (d) there is inserted “, and
  - (e) every officer of the OFT.”.
- (10) In section 46 (restrictions on authorisations extending to Scotland), in subsection (3), after paragraph (d) there is inserted—  
“(da) the OFT;”.
- (11) In section 48 (interpretation of Part 2), in subsection (1), after the entry relating to “directed” and “intrusive” there is inserted—  
““OFT” means the Office of Fair Trading;”.

## **200 Authorisation of action in respect of property**

- (1) Part 3 of the Police Act 1997 (c. 50) (authorisation of action in respect of property) is amended as follows.
- (2) In section 93 (authorisation to interfere with property etc.)—
- (a) in subsection (1B), after “customs officer” there is inserted “or an officer of the Office of Fair Trading”;
  - (b) after subsection (2A) there is inserted—
    - “(2AA) Where the authorising officer is the chairman of the Office of Fair Trading, the only purpose falling within subsection (2)(a) is the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002.”;
  - (c) in subsection (3), after paragraph (d) there is inserted “, or
    - (e) if the authorising officer is within subsection (5)(i), by an officer of the Office of Fair Trading.”;

- (d) in subsection (5), after paragraph (h) there is inserted “; or  
(i) the chairman of the Office of Fair Trading.”
- (3) In section 94 (authorisation given in absence of authorising officer) in subsection (2), after paragraph (f) there is inserted –
  - “(g) where the authorising officer is within paragraph (i) of that subsection, by an officer of the Office of Fair Trading designated by it for the purposes of this section.”

## 201 Offences

- (1) Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 193 or 194 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (2) A person who, in purported compliance with a requirement under section 193 or 194 –
  - (a) makes a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly makes a statement which is false or misleading in a material particular,is guilty of an offence.
- (3) A person guilty of an offence under subsection (2) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (4) Where any person –
  - (a) knows or suspects that an investigation by the Serious Fraud Office or the OFT into an offence under section 188 is being or is likely to be carried out; and
  - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation,he is guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from the persons carrying out such an investigation.
- (5) A person guilty of an offence under subsection (4) is liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (6) A person who intentionally obstructs a person in the exercise of his powers under a warrant issued under section 194 is guilty of an offence and liable –
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

## 202 Interpretation of sections 192 to 201

In sections 192 to 201 –

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in a form in which it is visible and legible, references to its production include references to producing it in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form;

“person under investigation” has the meaning given in section 192(2).

## PART 7

### MISCELLANEOUS COMPETITION PROVISIONS

#### *Powers of entry under 1998 Act*

## 203 Powers of entry

- (1) The 1998 Act is amended as follows.
- (2) In section 28 (power to enter premises under a warrant), after subsection (3) there is inserted –

“(3A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.”
- (3) In section 62 (power to enter premises: Commission investigations), after subsection (5) there is inserted –

“(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.”
- (4) In section 63 (power to enter premises: Director’s special investigations), after subsection (5) there is inserted –

“(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named authorised officer who is executing it.”

#### *Directors disqualification*

## 204 Disqualification

- (1) The Company Directors Disqualification Act 1986 (c. 46) is amended as follows.
- (2) The following sections are inserted after section 9 (matters for determining unfitness in certain cases)–

#### *“Disqualification for competition infringements*

### 9A Competition disqualification order

- (1) The court must make a disqualification order against a person if the following two conditions are satisfied in relation to him.

- (2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.
- (3) The second condition is that the court considers that his conduct as a director makes him unfit to be concerned in the management of a company.
- (4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following—
  - (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);
  - (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);
  - (c) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);
  - (d) Article 82 of that Treaty (prohibition on abuse of a dominant position).
- (5) For the purpose of deciding under subsection (3) whether a person is unfit to be concerned in the management of a company the court—
  - (a) must have regard to whether subsection (6) applies to him;
  - (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
  - (c) must not have regard to the matters mentioned in Schedule 1.
- (6) This subsection applies to a person if as a director of the company—
  - (a) his conduct contributed to the breach of competition law mentioned in subsection (2);
  - (b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;
  - (c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.
- (7) For the purposes of subsection (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.
- (8) For the purposes of subsection (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.
- (9) The maximum period of disqualification under this section is 15 years.
- (10) An application under this section for a disqualification order may be made by the OFT or by a specified regulator.
- (11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and Community law) applies in relation to any question arising by virtue of subsection (4)(a) or (b) above as it applies in relation to any question arising under Part 1 of that Act.



## **9B Competition undertakings**

- (1) This section applies if –
  - (a) the OFT or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,
  - (b) the OFT or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and
  - (c) the person offers to give the OFT or the specified regulator (as the case may be) a disqualification undertaking.
- (2) The OFT or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.
- (3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not –
  - (a) be a director of a company;
  - (b) act as receiver of a company's property;
  - (c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;
  - (d) act as an insolvency practitioner.
- (4) But a disqualification undertaking may provide that a prohibition falling within subsection (3)(a) to (c) does not apply if the person obtains the leave of the court.
- (5) The maximum period which may be specified in a disqualification undertaking is 15 years.
- (6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Act or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.
- (7) Subsections (4) to (8) of section 9A apply for the purposes of this section as they apply for the purposes of that section but in the application of subsection (5) of that section the reference to the court must be construed as a reference to the OFT or a specified regulator (as the case may be).

## **9C Competition investigations**

- (1) If the OFT or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it or he (as the case may be) may carry out an investigation for the purpose of deciding whether to make an application under section 9A for a disqualification order.
- (2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the OFT and the specified regulators as they apply to the OFT for the purposes of an investigation under section 25 of that Act.

- (3) Subsection (4) applies if as a result of an investigation under this section the OFT or a specified regulator proposes to apply under section 9A for a disqualification order.
- (4) Before making the application the OFT or regulator (as the case may be) must –
  - (a) give notice to the person likely to be affected by the application, and
  - (b) give that person an opportunity to make representations.

#### **9D Co-ordination**

- (1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under sections 9A to 9C (relevant functions) which are exercisable concurrently by two or more persons.
- (2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this section as it applies to regulations made under that section and for that purpose in that section –
  - (a) references to Part 1 functions must be read as references to relevant functions;
  - (b) references to a regulator must be read as references to a specified regulator;
  - (c) a competent person also includes any of the specified regulators.
- (3) The power to make regulations under this section must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Such a statutory instrument may –
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate;
  - (b) make different provision for different cases.

#### **9E Interpretation**

- (1) This section applies for the purposes of sections 9A to 9D.
- (2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which he or it has a function –
  - (a) the Director General of Telecommunications;
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Director General of Water Services;
  - (d) the Rail Regulator;
  - (e) the Civil Aviation Authority.
- (3) The court is the High Court or (in Scotland) the Court of Session.
- (4) Conduct includes omission.
- (5) Director includes shadow director.”

- (3) In section 1(1) (general provision about disqualification orders) for “section 6” substitute “sections 6 and 9A”.
- (4) In section 8A (variation etc of disqualification undertaking) after subsection (2) there is inserted the following subsection –
  - “(2A) Subsection (2) does not apply to an application in the case of an undertaking given under section 9B, and in such a case on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of section 9E) accepted the undertaking –
    - (a) must appear and call the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;
    - (b) may give evidence or call witnesses.”
- (5) In section 8A for subsection (3) there is substituted –
  - “(3) In this section “the court” –
    - (a) in the case of an undertaking given under section 9B means the High Court or (in Scotland) the Court of Session;
    - (b) in any other case has the same meaning as in section 7(2) or 8 (as the case may be).”
- (6) In section 16(3) for “the Secretary of State or the official receiver or the liquidator” substitute “a person falling within subsection (4)”.
- (7) In section 16 after subsection (3) there is inserted the following subsection –
  - “(4) The following fall within this subsection –
    - (a) the Secretary of State;
    - (b) the official receiver;
    - (c) the OFT;
    - (d) the liquidator;
    - (e) a specified regulator (within the meaning of section 9E).”
- (8) In section 17 (applications for leave under an order or undertaking) after subsection (3) there is inserted the following subsection –
  - “(3A) Where a person is subject to a disqualification undertaking accepted at any time under section 9B any application for leave for the purposes of section 9B(4) must be made to the High Court or (in Scotland) the Court of Session.”
- (9) In section 17(4) for “or 1A(1)(a)” substitute “1A(1)(a) or 9B(4)”.
- (10) In section 17 after subsection (5) there are inserted the following subsections –
  - “(6) Subsection (5) does not apply to an application for leave for the purposes of section 1(1)(a) if the application for the disqualification order was made under section 9A.
  - (7) In such a case and in the case of an application for leave for the purposes of section 9B(4) on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of section 9E) applied for the order or accepted the undertaking (as the case may be) –
    - (a) must appear and draw the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;
    - (b) may give evidence or call witnesses.”

- (11) In section 18 (register of disqualification orders and undertakings) for subsection (2A) substitute—
- “(2A) The Secretary of State must include in the register such particulars as he considers appropriate of—
- (a) disqualification undertakings accepted by him under section 7 or 8;
  - (b) disqualification undertakings accepted by the OFT or a specified regulator under section 9B;
  - (c) cases in which leave has been granted as mentioned in subsection (1)(d).”

*Miscellaneous*

**205 Super-complaints to regulators other than OFT**

- (1) The Secretary of State may by order provide that section 11 is to apply to complaints made to a specified regulator in relation to a market of a specified description as it applies to complaints made to the OFT, with such modifications as may be specified.
- (2) An order under this section—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) In this section—
  - “regulator” has the meaning given in section 54(1) of the 1998 Act; and
  - “specified” means specified in the order.

**206 Power to modify Schedule 8**

- (1) The Secretary of State may by order made by statutory instrument modify Schedule 8.
- (2) An order under this section may make—
  - (a) different provision for different cases or different purposes;
  - (b) such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) An order under this section may, in particular, modify that Schedule in its application by virtue of Part 3 of this Act, in its application by virtue of Part 4 of this Act, in its application by virtue of any other enactment (whether by virtue of Part 4 of this Act as applied by that enactment or otherwise) or in its application by virtue of every enactment that applies it.
- (4) An order under this section as extended by subsection (2) may modify any enactment comprised in or made under this Act, or any other enactment.
- (5) No order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) No modification of Schedule 8 in its application by virtue of Part 3 of this Act shall be made by an order under this section if the modification relates to a

relevant merger situation or (as the case may be) a special merger situation which has been created before the coming into force of the order.

- (7) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 22, 33, 45 or 62 before the coming into force of the order.
- (8) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 131 or 132 before the coming into force of the order (including references made under section 131 as applied by another enactment).
- (9) Before making an order under this section, the Secretary of State shall consult the OFT and the Commission.
- (10) Expressions used in this section which are also used in Part 3 of this Act have the same meaning in this section as in that Part.

#### **207 Repeal of Schedule 4 to the 1998 Act**

Section 3(1)(d) of and Schedule 4 to the 1998 Act (which provide for the exclusion from the Chapter 1 prohibition in cases involving designated professional rules) shall cease to have effect.

#### **208 Repeal of Part 6 of Fair Trading Act 1973**

Sections 78 to 80 of the 1973 Act (references to Commission other than monopoly and merger references) shall cease to have effect.

#### **209 Reform of Community competition law**

- (1) The Secretary of State may by regulations make such modifications of the 1998 Act as he considers appropriate for the purpose of eliminating or reducing any differences between—
  - (a) the domestic provisions of the 1998 Act, and
  - (b) European Community competition law,which result (or would otherwise result) from a relevant Community instrument made after the passing of this Act.
- (2) In subsection (1)—
  - “the domestic provisions of the 1998 Act” means the provisions of the 1998 Act so far as they do not implement or give effect to a relevant Community instrument;
  - “European Community competition law” includes any Act or subordinate legislation so far as it implements or gives effect to a relevant Community instrument;
  - “relevant Community instrument” means a regulation or directive under Article 83 of the Treaty establishing the European Community.
- (3) The Secretary of State may by regulations repeal or otherwise modify any provision of an Act (other than the 1998 Act) which excludes any matter from the Chapter I prohibition or the Chapter II prohibition (within the meaning of Part 1 of the 1998 Act).
- (4) The power under subsection (3) may not be exercised—
  - (a) before the power under subsection (1) has been exercised; or

- (b) so as to extend the scope of any exclusion that is not being removed by the regulations.
- (5) Regulations under this section may –
  - (a) confer power to make subordinate legislation;
  - (b) make such consequential, supplementary, incidental, transitory, transitional or saving provision as the Secretary of State considers appropriate (including provision modifying any Act or subordinate legislation); and
  - (c) make different provision for different cases or circumstances.
- (6) The power to make regulations under this section is exercisable by statutory instrument.
- (7) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (8) Paragraph 1(1)(c) of Schedule 2 to the European Communities Act 1972 (c. 68) (restriction on powers to legislate) shall not apply to regulations which implement or give effect to a relevant Community instrument made after the passing of this Act.

## **PART 8**

### ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

#### *Introduction*

#### **210 Consumers**

- (1) In this Part references to consumers must be construed in accordance with this section.
- (2) In relation to a domestic infringement a consumer is an individual in respect of whom the first and second conditions are satisfied.
- (3) The first condition is that –
  - (a) goods are or are sought to be supplied to the individual (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or
  - (b) services are or are sought to be supplied to the individual in the course of a business carried on by the person supplying or seeking to supply them.
- (4) The second condition is that –
  - (a) the individual receives or seeks to receive the goods or services otherwise than in the course of a business carried on by him, or
  - (b) the individual receives or seeks to receive the goods or services with a view to carrying on a business but not in the course of a business carried on by him.
- (5) For the purposes of a domestic infringement it is immaterial whether a person supplying goods or services has a place of business in the United Kingdom.
- (6) In relation to a Community infringement a consumer is a person who is a consumer for the purposes of –

- (a) the Injunctions Directive, and
  - (b) the listed Directive concerned.
- (7) A Directive is a listed Directive –
- (a) if it is a Directive of the Council of the European Communities or of the European Parliament and of the Council, and
  - (b) if it is specified in Schedule 13 or to the extent that any of its provisions is so specified.
- (8) A business includes –
- (a) a professional practice;
  - (b) any other undertaking carried on for gain or reward;
  - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) The Secretary of State may by order modify Schedule 13.
- (10) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **211 Domestic infringements**

- (1) In this Part a domestic infringement is an act or omission which –
- (a) is done or made by a person in the course of a business,
  - (b) falls within subsection (2), and
  - (c) harms the collective interests of consumers in the United Kingdom.
- (2) An act or omission falls within this subsection if it is of a description specified by the Secretary of State by order and consists of any of the following –
- (a) a contravention of an enactment which imposes a duty, prohibition or restriction enforceable by criminal proceedings;
  - (b) an act done or omission made in breach of contract;
  - (c) an act done or omission made in breach of a non-contractual duty owed to a person by virtue of an enactment or rule of law and enforceable by civil proceedings;
  - (d) an act or omission in respect of which an enactment provides for a remedy or sanction enforceable by civil proceedings;
  - (e) an act done or omission made by a person supplying or seeking to supply goods or services as a result of which an agreement or security relating to the supply is void or unenforceable to any extent;
  - (f) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to exercise a right or remedy relating to the supply in circumstances where the exercise of the right or remedy is restricted or excluded under or by virtue of an enactment;
  - (g) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to avoid (to any extent) liability relating to the supply in circumstances where such avoidance is restricted or prevented under an enactment.
- (3) But an order under this section may provide that any description of act or omission falling within subsection (2) is not a domestic infringement.
- (4) For the purposes of subsection (2) it is immaterial –

- (a) whether or not any duty, prohibition or restriction exists in relation to consumers as such;
  - (b) whether or not any remedy or sanction is provided for the benefit of consumers as such;
  - (c) whether or not any proceedings have been brought in relation to the act or omission;
  - (d) whether or not any person has been convicted of an offence in respect of the contravention mentioned in subsection (2)(a);
  - (e) whether or not there is a waiver in respect of the breach of contract mentioned in subsection (2)(b).
- (5) References to an enactment include references to subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).
- (6) The power to make an order under this section must be exercised by statutory instrument.
- (7) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

## **212 Community infringements**

- (1) In this Part a Community infringement is an act or omission which harms the collective interests of consumers and which—
- (a) contravenes a listed Directive as given effect by the laws, regulations or administrative provisions of an EEA State, or
  - (b) contravenes such laws, regulations or administrative provisions which provide additional permitted protections.
- (2) The laws, regulations or administrative provisions of an EEA State which give effect to a listed Directive provide additional permitted protections if—
- (a) they provide protection for consumers which is in addition to the minimum protection required by the Directive concerned, and
  - (b) such additional protection is permitted by that Directive.
- (3) The Secretary of State may by order specify for the purposes of this section the law in the United Kingdom which—
- (a) gives effect to the listed Directives;
  - (b) provides additional permitted protections.
- (4) References to a listed Directive must be construed in accordance with section 210.
- (5) An EEA State is a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.
- (6) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **213 Enforcers**

- (1) Each of the following is a general enforcer—
- (a) the OFT;
  - (b) every local weights and measures authority in Great Britain;



- (c) the Department of Enterprise, Trade and Investment in Northern Ireland.
- (2) A designated enforcer is any person or body (whether or not incorporated) which the Secretary of State –
  - (a) thinks has as one of its purposes the protection of the collective interests of consumers, and
  - (b) designates by order.
- (3) The Secretary of State may designate a public body only if he is satisfied that it is independent.
- (4) The Secretary of State may designate a person or body which is not a public body only if the person or body (as the case may be) satisfies such criteria as the Secretary of State specifies by order.
- (5) A Community enforcer is a qualified entity for the purposes of the Injunctions Directive –
  - (a) which is for the time being specified in the list published in the Official Journal of the European Communities in pursuance of Article 4.3 of that Directive, but
  - (b) which is not a general enforcer or a designated enforcer.
- (6) An order under this section may designate an enforcer in respect of –
  - (a) all infringements;
  - (b) infringements of such descriptions as are specified in the order.
- (7) An order under this section may make different provision for different purposes.
- (8) The designation of a body by virtue of subsection (3) is conclusive evidence for the purposes of any question arising under this Part that the body is a public body.
- (9) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If requested to do so by a designated enforcer which is designated in respect of one or more Community infringements the Secretary of State must notify the Commission of the European Communities –
  - (a) of its name and purpose;
  - (b) of the Community infringements in respect of which it is designated.
- (11) The Secretary of State must also notify the Commission –
  - (a) of the fact that a person or body in respect of which he has given notice under subsection (10) ceases to be a designated enforcer;
  - (b) of any change in the name or purpose of a designated enforcer in respect of which he has given such notice;
  - (c) of any change to the Community infringements in respect of which a designated enforcer is designated.

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*Enforcement procedure***214 Consultation**

- (1) An enforcer must not make an application for an enforcement order unless he has engaged in appropriate consultation with—
  - (a) the person against whom the enforcement order would be made, and
  - (b) the OFT (if it is not the enforcer).
- (2) Appropriate consultation is consultation for the purpose of—
  - (a) achieving the cessation of the infringement in a case where an infringement is occurring;
  - (b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred;
  - (c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a);
  - (d) ensuring that the infringement does not take place in the case of a Community infringement which the enforcer believes is likely to take place.
- (3) Subsection (1) does not apply if the OFT thinks that an application for an enforcement order should be made without delay.
- (4) Subsection (1) ceases to apply—
  - (a) for the purposes of an application for an enforcement order at the end of the period of 14 days beginning with the day after the person against whom the enforcement order would be made receives a request for consultation from the enforcer;
  - (b) for the purposes of an application for an interim enforcement order at the end of the period of seven days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the enforcer.
- (5) The Secretary of State may by order make rules in relation to consultation under this section.
- (6) Such an order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section (except subsection (4)) and in sections 215 and 216 references to an enforcement order include references to an interim enforcement order.

**215 Applications**

- (1) An application for an enforcement order must name the person the enforcer thinks—
  - (a) has engaged or is engaging in conduct which constitutes a domestic or a Community infringement, or
  - (b) is likely to engage in conduct which constitutes a Community infringement.
- (2) A general enforcer may make an application for an enforcement order in respect of any infringement.

- (3) A designated enforcer may make an application for an enforcement order in respect of an infringement to which his designation relates.
- (4) A Community enforcer may make an application for an enforcement order in respect of a Community infringement.
- (5) The following courts have jurisdiction to make an enforcement order—
  - (a) the High Court or a county court if the person against whom the order is sought carries on business or has a place of business in England and Wales or Northern Ireland;
  - (b) the Court of Session or the sheriff if the person against whom the order is sought carries on business or has a place of business in Scotland.
- (6) If an application for an enforcement order is made by a Community enforcer the court may examine whether the purpose of the enforcer justifies its making the application.
- (7) If the court thinks that the purpose of the Community enforcer does not justify its making the application the court may refuse the application on that ground alone.
- (8) The purpose of a Community enforcer must be construed by reference to the Injunctions Directive.
- (9) An enforcer which is not the OFT must notify the OFT of the result of an application under this section.

#### **216 Applications: directions by OFT**

- (1) This section applies if the OFT believes that an enforcer other than the OFT intends to apply for an enforcement order.
- (2) In such a case the OFT may direct that if an application in respect of a particular infringement is to be made it must be made—
  - (a) only by the OFT, or
  - (b) only by such other enforcer as the OFT directs.
- (3) If the OFT directs that only it may make an application that does not prevent—
  - (a) the OFT or any enforcer from accepting an undertaking under section 219, or
  - (b) the OFT from taking such other steps it thinks appropriate (apart from making an application) for the purpose of securing that the infringement is not committed, continued or repeated.
- (4) The OFT may vary or withdraw a direction given under this section.
- (5) The OFT must take such steps as it thinks appropriate to bring a direction (or a variation or withdrawal of a direction) to the attention of enforcers it thinks may be affected by it.
- (6) But this section does not prevent an application for an enforcement order being made by a Community enforcer.

**217 Enforcement orders**

- (1) This section applies if an application for an enforcement order is made under section 215 and the court finds that the person named in the application has engaged in conduct which constitutes the infringement.
- (2) This section also applies if such an application is made in relation to a Community infringement and the court finds that the person named in the application is likely to engage in conduct which constitutes the infringement.
- (3) If this section applies the court may make an enforcement order against the person.
- (4) In considering whether to make an enforcement order the court must have regard to whether the person named in the application –
  - (a) has given an undertaking under section 219 in respect of conduct such as is mentioned in subsection (3) of that section;
  - (b) has failed to comply with the undertaking.
- (5) An enforcement order must –
  - (a) indicate the nature of the conduct to which the finding under subsection (1) or (2) relates, and
  - (b) direct the person to comply with subsection (6).
- (6) A person complies with this subsection if he –
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (7) But subsection (6)(a) does not apply in the case of a finding under subsection (2).
- (8) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement –
  - (a) the order;
  - (b) a corrective statement.
- (9) If the court makes a finding under subsection (1) or (2) it may accept an undertaking by the person –
  - (a) to comply with subsection (6), or
  - (b) to take steps which the court believes will secure that he complies with subsection (6).
- (10) An undertaking under subsection (9) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement –
  - (a) the terms of the undertaking;
  - (b) a corrective statement.
- (11) If the court –

- (a) makes a finding under subsection (1) or (2), and
  - (b) accepts an undertaking under subsection (9),
- it must not make an enforcement order in respect of the infringement to which the undertaking relates.
- (12) An enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

## 218 Interim enforcement order

- (1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court –
- (a) that it is alleged that the person is engaged in conduct which constitutes a domestic or Community infringement or is likely to engage in conduct which constitutes a Community infringement,
  - (b) that if the application had been an application for an enforcement order it would be likely to be granted,
  - (c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately, and
  - (d) if no notice of the application has been given to the person named in the application that it is appropriate to make an interim enforcement order without notice.
- (2) An interim enforcement order must –
- (a) indicate the nature of the alleged conduct, and
  - (b) direct the person to comply with subsection (3).
- (3) A person complies with this subsection if he –
- (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (4) But subsection (3)(a) does not apply in so far as the application is made in respect of an allegation that the person is likely to engage in conduct which constitutes a Community infringement.
- (5) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.
- (6) An application for an interim enforcement order must refer to all matters –
- (a) which are known to the applicant, and
  - (b) which are material to the question whether or not the application is granted.
- (7) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.
- (8) The court may vary or discharge an interim enforcement order on the application of –
- (a) the enforcer who applied for the order;
  - (b) the person against whom it is made.

- (9) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.
- (10) If it appears to the court as mentioned in subsection (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application –
  - (a) to comply with subsection (3), or
  - (b) to take steps which the court believes will secure that he complies with subsection (3).
- (11) An interim enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

## **219 Undertakings**

- (1) This section applies if an enforcer has power to make an application under section 215.
- (2) In such a case the enforcer may accept from a person to whom subsection (3) applies an undertaking that the person will comply with subsection (4).
- (3) This subsection applies to a person who the enforcer believes –
  - (a) has engaged in conduct which constitutes an infringement;
  - (b) is engaging in such conduct;
  - (c) is likely to engage in conduct which constitutes a Community infringement.
- (4) A person complies with this subsection if he –
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (5) But subsection (4)(a) does not apply in the case of an undertaking given by a person in so far as subsection (3) applies to him by virtue of paragraph (c).
- (6) If an enforcer accepts an undertaking under this section it must notify the OFT –
  - (a) of the terms of the undertaking;
  - (b) of the identity of the person who gave it.

## **220 Further proceedings**

- (1) This section applies if the court –
  - (a) makes an enforcement order under section 217,
  - (b) makes an interim enforcement order under section 218, or
  - (c) accepts an undertaking under either of those sections.
- (2) In such a case the OFT has the same right to apply to the court in respect of a failure to comply with the order or undertaking as the enforcer who made the application for the order.

- (3) An application to the court in respect of a failure to comply with an undertaking may include an application for an enforcement order or for an interim enforcement order.
- (4) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order (instead of making any other order it has power to make).
- (5) In the case of an application for an enforcement order or for an interim enforcement order as mentioned in subsection (3) sections 214 and 216 must be ignored and sections 215 and 217 or 218 (as the case may be) apply subject to the following modifications –
  - (a) section 215(1)(b) must be ignored;
  - (b) section 215(5) must be ignored and the application must be made to the court which accepted the undertaking;
  - (c) section 217(9) to (11) must be ignored;
  - (d) section 218(10) must be ignored.
- (6) If an enforcer which is not the OFT makes an application in respect of the failure of a person to comply with an enforcement order, an interim enforcement order or an undertaking given under section 217 or 218 the enforcer must notify the OFT –
  - (a) of the application;
  - (b) of any order made by the court on the application.

## **221 Community infringements: proceedings**

- (1) Subsection (2) applies to –
  - (a) every general enforcer;
  - (b) every designated enforcer which is a public body.
- (2) An enforcer to which this subsection applies has power to take proceedings in EEA States other than the United Kingdom for the cessation or prohibition of a Community infringement.
- (3) Subsection (4) applies to –
  - (a) every general enforcer;
  - (b) every designated enforcer.
- (4) An enforcer to which this subsection applies may co-operate with a Community enforcer –
  - (a) for the purpose of bringing proceedings mentioned in subsection (2);
  - (b) in connection with the exercise by the Community enforcer of its functions under this Part.
- (5) An EEA State is a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

## **222 Bodies corporate: accessories**

- (1) This section applies if the person whose conduct constitutes a domestic infringement or a Community infringement is a body corporate.

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- (2) If the conduct takes place with the consent or connivance of a person (an accessory) who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.
  - (3) A person has a special relationship with a body corporate if he is –
    - (a) a controller of the body corporate, or
    - (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.
  - (4) A person is a controller of a body corporate if –
    - (a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions, or
    - (b) either alone or with an associate or associates he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.
  - (5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.
  - (6) The court may accept an undertaking under section 217(9) or 218(10) from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
  - (7) An enforcer may accept an undertaking under section 219 from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
  - (8) Subsection (9) applies if –
    - (a) an order is made as mentioned in subsection (5), or
    - (b) an undertaking is accepted as mentioned in subsection (6) or (7).
  - (9) In such a case for subsection (6) of section 217, subsection (3) of section 218 or subsection (4) of section 219 (as the case may be) there is substituted the following subsection –
    - ( ) A person complies with this subsection if he –
      - (a) does not continue or repeat the conduct;
      - (b) does not in the course of any business carried on by him engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in section 222(1);
      - (c) does not consent to or connive in the carrying out of such conduct by another body corporate with which he has a special relationship (within the meaning of section 222(3)).”
  - (10) A person is an associate of an individual if –
    - (a) he is the spouse of the individual;
    - (b) he is a relative of the individual;
    - (c) he is a relative of the individual's spouse;
    - (d) he is the spouse of a relative of the individual;
    - (e) he is the spouse of a relative of the individual's spouse;
    - (f) he lives in the same household as the individual otherwise than merely because he or the individual is the other's employer, tenant, lodger or boarder;



- (g) he is a relative of a person who is an associate of the individual by virtue of paragraph (f);
  - (h) he has at some time in the past fallen within any of paragraphs (a) to (g).
- (11) A person is also an associate of –
- (a) an individual with whom he is in partnership;
  - (b) an individual who is an associate of the individual mentioned in paragraph (a);
  - (c) a body corporate if he is a controller of it or he is an associate of a person who is a controller of the body corporate.
- (12) A body corporate is an associate of another body corporate if –
- (a) the same person is a controller of both;
  - (b) a person is a controller of one and persons who are his associates are controllers of the other;
  - (c) a person is a controller of one and he and persons who are his associates are controllers of the other;
  - (d) a group of two or more persons is a controller of each company and the groups consist of the same persons;
  - (e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.
- (13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

### 223 Bodies corporate: orders

- (1) This section applies if a court makes an enforcement order or an interim enforcement order against a body corporate and –
- (a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,
  - (b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or
  - (c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.
- (2) The court may direct that the order is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.
- (3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (4) Any two bodies corporate are interconnected –
- (a) if one of them is a subsidiary of the other, or
  - (b) if both of them are subsidiaries of the same body corporate.
- (5) “Subsidiary” must be construed in accordance with section 736 of the Companies Act 1985 (c. 6).

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*Information***224 OFT**

- (1) The OFT may for any of the purposes mentioned in subsection (2) give notice to any person requiring the person to provide it with the information specified in the notice.
- (2) The purposes are—
  - (a) to enable the OFT to exercise or to consider whether to exercise any function it has under this Part;
  - (b) to enable a designated enforcer to which section 225 does not apply to consider whether to exercise any function it has under this Part;
  - (c) to enable a Community enforcer to consider whether to exercise any function it has under this Part;
  - (d) to ascertain whether a person has complied with or is complying with an enforcement order, an interim enforcement order or an undertaking given under section 217(9), 218(10) or 219.

**225 Other enforcers**

- (1) This section applies to—
  - (a) every general enforcer (other than the OFT);
  - (b) every designated enforcer which is a public body.
- (2) An enforcer to which this section applies may for any of the purposes mentioned in subsection (3) give notice to any person requiring the person to provide the enforcer with the information specified in the notice.
- (3) The purposes are—
  - (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under this Part;
  - (b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of the enforcer or an undertaking given under section 217(9) or 218(10) (as the case may be) following such an application or an undertaking given to the enforcer under section 219.

**226 Notices: procedure**

- (1) This section applies to a notice given under section 224 or 225.
- (2) The notice must—
  - (a) be in writing;
  - (b) specify the purpose for which the information is required.
- (3) If the purpose is as mentioned in section 224(2)(a), (b) or (c) or 225(3)(a) the notice must specify the function concerned.
- (4) A notice may specify the time within which and manner in which it is to be complied with.
- (5) A notice may require the production of documents or any description of documents.

- (6) An enforcer may take copies of any documents produced in compliance with such a requirement.
- (7) A notice may be varied or revoked by a subsequent notice.
- (8) But a notice must not require a person to provide any information or produce any document which he would be entitled to refuse to provide or produce—
  - (a) in proceedings in the High Court on the grounds of legal professional privilege;
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

## 227 Notices: enforcement

- (1) If a person fails to comply with a notice given under section 224 or 225 the enforcer who gave the notice may make an application under this section.
- (2) If it appears to the court that the person to whom the notice was given has failed to comply with the notice the court may make an order under this section.
- (3) An order under this section may require the person to whom the notice was given to do anything the court thinks it is reasonable for him to do for any of the purposes mentioned in section 224 or 225 (as the case may be) to ensure that the notice is complied with.
- (4) An order under this section may require the person to meet all the costs or expenses of the application.
- (5) If the person is a company or association the court in proceeding under subsection (4) may require any officer of the company or association who is responsible for the failure to meet the costs or expenses.
- (6) The court is a court which may make an enforcement order.
- (7) In subsection (5) an officer of a company is a person who is a director, manager, secretary or other similar officer of the company.

### *Miscellaneous*

## 228 Evidence

- (1) Proceedings under this Part are civil proceedings for the purposes of—
  - (a) section 11 of the Civil Evidence Act 1968 (c. 64) (convictions admissible as evidence in civil proceedings);
  - (b) section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) (corresponding provision in Scotland);
  - (c) section 7 of the Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.)) (corresponding provision in Northern Ireland).
- (2) In proceedings under this Part any finding by a court in civil proceedings that an act or omission mentioned in section 211(2)(b), (c) or (d) or 212(1) has occurred—
  - (a) is admissible as evidence that the act or omission occurred;
  - (b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.

- (3) But subsection (2) does not apply to any finding –
  - (a) which has been reversed on appeal;
  - (b) which has been varied on appeal so as to negative it.

## **229 Advice and information**

- (1) As soon as is reasonably practicable after the passing of this Act the OFT must prepare and publish advice and information with a view to –
  - (a) explaining the provisions of this Part to persons who are likely to be affected by them, and
  - (b) indicating how the OFT expects such provisions to operate.
- (2) The OFT may at any time publish revised or new advice or information.
- (3) Advice or information published in pursuance of subsection (1)(b) may include advice or information about the factors which the OFT may take into account in considering how to exercise the functions conferred on it by this Part.
- (4) Advice or information published by the OFT under this section is to be published in such form and in such manner as it considers appropriate.
- (5) In preparing advice or information under this section the OFT must consult such persons as it thinks are representative of persons affected by this Part.
- (6) If any proposed advice or information relates to a matter in respect of which another general enforcer or a designated enforcer may act the persons to be consulted must include that enforcer.

## **230 Notice to OFT of intended prosecution**

- (1) This section applies if a local weights and measures authority in England and Wales intends to start proceedings for an offence under an enactment or subordinate legislation specified by the Secretary of State by order for the purposes of this section.
- (2) The authority must give the OFT –
  - (a) notice of its intention to start the proceedings;
  - (b) a summary of the evidence it intends to lead in respect of the charges.
- (3) The authority must not start the proceedings until whichever is the earlier of the following –
  - (a) the end of the period of 14 days starting with the day on which the authority gives the notice;
  - (b) the day on which it is notified by the OFT that the OFT has received the notice and summary given under subsection (2).
- (4) The authority must also notify the OFT of the outcome of the proceedings after they are finally determined.
- (5) But such proceedings are not invalid by reason only of the failure of the authority to comply with this section.
- (6) Subordinate legislation has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30).
- (7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **231 Notice of convictions and judgments to OFT**

- (1) This section applies if –
  - (a) a person is convicted of an offence by or before a court in the United Kingdom, or
  - (b) a judgment is given against a person by a court in civil proceedings in the United Kingdom.
- (2) The court may make arrangements to bring the conviction or judgment to the attention of the OFT if it appears to the court –
  - (a) having regard to the functions of the OFT under this Part or under the Estate Agents Act 1979 (c. 38) that it is expedient for the conviction or judgment to be brought to the attention of the OFT, and
  - (b) without such arrangements the conviction or judgment may not be brought to the attention of the OFT.
- (3) For the purposes of subsection (2) it is immaterial that the proceedings have been finally disposed of by the court.
- (4) Judgment includes an order or decree and references to the giving of the judgment must be construed accordingly.

#### *Interpretation*

### **232 Goods and services**

- (1) References in this Part to goods and services must be construed in accordance with this section.
- (2) Goods include –
  - (a) buildings and other structures;
  - (b) ships, aircraft and hovercraft.
- (3) The supply of goods includes –
  - (a) supply by way of sale, lease, hire or hire purchase;
  - (b) in relation to buildings and other structures, construction of them by one person for another.
- (4) Goods or services which are supplied wholly or partly outside the United Kingdom must be taken to be supplied to or for a person in the United Kingdom if they are supplied in accordance with arrangements falling within subsection (5).
- (5) Arrangements fall within this subsection if they are made by any means and –
  - (a) at the time the arrangements are made the person seeking the supply is in the United Kingdom, or
  - (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the United Kingdom.

### **233 Person supplying goods**

- (1) This section has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under –

- (a) a hire-purchase agreement;
  - (b) a credit-sale agreement;
  - (c) a conditional sale agreement.
- (2) The references include references to a person who conducts any antecedent negotiations relating to the agreement.
- (3) The following expressions must be construed in accordance with section 189 of the Consumer Credit Act 1974 (c. 39) –
- (a) hire-purchase agreement;
  - (b) credit-sale agreement;
  - (c) conditional sale agreement;
  - (d) antecedent negotiations.

### **234 Supply of services**

- (1) References in this Part to the supply of services must be construed in accordance with this section.
- (2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.
- (3) The supply of services includes –
- (a) performing for gain or reward any activity other than the supply of goods;
  - (b) rendering services to order;
  - (c) the provision of services by making them available to potential users.
- (4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.
- (5) The supply of services includes making arrangements by means of a relevant agreement (within the meaning of section 189(2) of the Broadcasting Act 1990 (c. 42)) for sharing the use of telecommunications apparatus.
- (6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State specifies by order.
- (7) The power to make an order under subsection (6) must be exercised by statutory instrument.
- (8) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

### **235 Injunctions Directive**

In this Part the Injunctions Directive is Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests.

*Crown*

**236 Crown**

This Part binds the Crown.

**PART 9**

INFORMATION

*Restrictions on disclosure*

**237 General restriction**

- (1) This section applies to specified information which relates to –
  - (a) the affairs of an individual;
  - (b) any business of an undertaking.
- (2) Such information must not be disclosed –
  - (a) during the lifetime of the individual, or
  - (b) while the undertaking continues in existence,unless the disclosure is permitted under this Part.
- (3) But subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene –
  - (a) that subsection;
  - (b) any other enactment or rule of law prohibiting or restricting the disclosure of the information.
- (4) Nothing in this Part authorises a disclosure of information which contravenes the Data Protection Act 1998 (c. 29).
- (5) Nothing in this Part affects the Competition Appeal Tribunal.
- (6) This Part (except section 244) does not affect any power or duty to disclose information which exists apart from this Part.

**238 Information**

- (1) Information is specified information if it comes to a public authority in connection with the exercise of any function it has under or by virtue of –
  - (a) Part 1, 3, 4, 6, 7 or 8;
  - (b) an enactment specified in Schedule 14;
  - (c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.
- (2) It is immaterial whether information comes to a public authority before or after the passing of this Act.
- (3) Public authority (except in the expression “overseas public authority”) must be construed in accordance with section 6 of the Human Rights Act 1998 (c. 42).
- (4) In subsection (1) the reference to an enactment includes a reference to an enactment contained in –

- (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation;
  - (c) subordinate legislation.
- (5) The Secretary of State may by order amend Schedule 14.
- (6) The power to make an order under subsection (5) includes power to add, vary or remove a reference to any provision of—
- (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.
- (7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) This section applies for the purposes of this Part.

*Permitted disclosure*

**239 Consent**

- (1) This Part does not prohibit the disclosure by a public authority of information held by it to any other person if it obtains each required consent.
- (2) If the information was obtained by the authority from a person who had the information lawfully and the authority knows the identity of that person the consent of that person is required.
- (3) If the information relates to the affairs of an individual the consent of the individual is required.
- (4) If the information relates to the business of an undertaking the consent of the person for the time being carrying on the business is required.
- (5) For the purposes of subsection (4) consent may be given—
- (a) in the case of a company by a director, secretary or other officer of the company;
  - (b) in the case of a partnership by a partner;
  - (c) in the case of an unincorporated body or association by a person concerned in the management or control of the body or association.

**240 Community obligations**

This Part does not prohibit the disclosure of information held by a public authority to another person if the disclosure is required for the purpose of a Community obligation.

**241 Statutory functions**

- (1) A public authority which holds information to which section 237 applies may disclose that information for the purpose of facilitating the exercise by the authority of any function it has under or by virtue of this Act or any other enactment.
- (2) If information is disclosed under subsection (1) so that it is not made available to the public it must not be further disclosed by a person to whom it is so



disclosed other than with the agreement of the public authority for the purpose mentioned in that subsection.

- (3) A public authority which holds information to which section 237 applies may disclose that information to any other person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of—
  - (a) this Act;
  - (b) an enactment specified in Schedule 15;
  - (c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.
- (4) Information disclosed under subsection (3) must not be used by the person to whom it is disclosed for any purpose other than a purpose relating to a function mentioned in that subsection.
- (5) In subsection (1) the reference to an enactment includes a reference to an enactment contained in—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation;
  - (c) subordinate legislation.
- (6) The Secretary of State may by order amend Schedule 15.
- (7) The power to make an order under subsection (6) includes power to add, vary or remove a reference to any provision of—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.
- (8) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 242 Criminal proceedings

- (1) A public authority which holds information to which section 237 applies may disclose that information to any person—
  - (a) in connection with the investigation of any criminal offence in any part of the United Kingdom;
  - (b) for the purposes of any criminal proceedings there;
  - (c) for the purpose of any decision whether to start or bring to an end such an investigation or proceedings.
- (2) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than that for which it is disclosed.
- (3) A public authority must not make a disclosure under this section unless it is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

## 243 Overseas disclosures

- (1) A public authority which holds information to which section 237 applies (the discloser) may disclose that information to an overseas public authority for the purpose mentioned in subsection (2).
- (2) The purpose is facilitating the exercise by the overseas public authority of any function which it has relating to—

- 
- (a) carrying out investigations in connection with the enforcement of any relevant legislation by means of civil proceedings;
    - (b) bringing civil proceedings for the enforcement of such legislation or the conduct of such proceedings;
    - (c) the investigation of crime;
    - (d) bringing criminal proceedings or the conduct of such proceedings;
    - (e) deciding whether to start or bring to an end such investigations or proceedings.
  - (3) But subsection (1) does not apply to any of the following –
    - (a) information which is held by a person who is designated by virtue of section 213(4) as a designated enforcer for the purposes of Part 8;
    - (b) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980 (c. 21);
    - (c) competition information within the meaning of section 351 of the Financial Services and Markets Act 2000 (c. 8);
    - (d) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act.
  - (4) The Secretary of State may direct that a disclosure permitted by this section must not be made if he thinks that in connection with any matter in respect of which the disclosure could be made it is more appropriate –
    - (a) if any investigation is to be carried out, that it is carried out by an authority in the United Kingdom or in another specified country or territory;
    - (b) if any proceedings are to be brought, that they are brought in a court in the United Kingdom or in another specified country or territory.
  - (5) The Secretary of State must take such steps as he thinks are appropriate to bring a direction under subsection (4) to the attention of persons likely to be affected by it.
  - (6) In deciding whether to disclose information under this section a public authority must have regard in particular to the following considerations –
    - (a) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure;
    - (b) whether the law of the country or territory to whose authority the disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings;
    - (c) whether the law of that country or territory provides appropriate protection in relation to the storage and disclosure of personal data;
    - (d) whether there are arrangements in place for the provision of mutual assistance as between the United Kingdom and that country or territory in relation to the disclosure of information of the kind to which section 237 applies.
  - (7) Protection is appropriate if it provides protection in relation to the matter in question which corresponds to that so provided in any part of the United Kingdom.
  - (8) The Secretary of State may by order –
    - (a) modify the list of considerations in subsection (6);
    - (b) add to those considerations;

- (c) remove any of those considerations.
- (9) An order under subsection (8) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Information disclosed under this section –
  - (a) may be disclosed subject to the condition that it must not be further disclosed without the agreement of the discloser, and
  - (b) must not otherwise be used by the overseas public authority to which it is disclosed for any purpose other than that for which it is first disclosed.
- (11) An overseas public authority is a person or body in any country or territory outside the United Kingdom which appears to the discloser to exercise functions of a public nature in relation to any of the matters mentioned in paragraphs (a) to (e) of subsection (2).
- (12) Relevant legislation is –
  - (a) this Act, any enactment specified in Schedule 14 and such subordinate legislation as is specified by order for the purposes of section 238(1);
  - (b) any enactment or subordinate legislation specified in an order under section 211(2);
  - (c) any enactment or subordinate legislation specified in an order under section 212(3);
  - (d) legislation in any country or territory outside the United Kingdom which appears to the discloser to make provision corresponding to this Act or to any such enactment or subordinate legislation.

#### **244 Specified information: considerations relevant to disclosure**

- (1) A public authority must have regard to the following considerations before disclosing any specified information (within the meaning of section 238(1)).
- (2) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the authority thinks is contrary to the public interest.
- (3) The second consideration is the need to exclude from disclosure (so far as practicable) –
  - (a) commercial information whose disclosure the authority 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 authority thinks might significantly harm the individual's interests.
- (4) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3)(a) or (b) is necessary for the purpose for which the authority is permitted to make the disclosure.

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*Offences***245 Offences**

- (1) A person commits an offence if he discloses information to which section 237 applies in contravention of section 237(2).
- (2) A person commits an offence if he discloses information in contravention of a direction given under section 243(4).
- (3) A person commits an offence if he uses information disclosed to him under this Part for a purpose which is not permitted under this Part.
- (4) A person who commits an offence under this section is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

*General***246 Subordinate legislation**

In this Part “subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30) and includes an instrument made under—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.

**247 Repeals**

The following enactments (which make provision as to the disclosure of certain information) shall cease to have effect—

- (a) section 28(5) and (5A) of the Trade Descriptions Act 1968 (c. 29);
- (b) sections 30(3) and 133 of the 1973 Act;
- (c) paragraph 12 of the Schedule to the Prices Act 1974 (c. 24);
- (d) section 174 of the Consumer Credit Act 1974 (c. 39);
- (e) section 10 of the Estate Agents Act 1979 (c. 38);
- (f) section 19(1) to (3), (4)(c), (d) and (f) and (5) and (6) of the Competition Act 1980 (c. 21);
- (g) section 38 of the Consumer Protection Act 1987 (c. 43);
- (h) paragraph 7 of the Schedule to the Property Misdescriptions Act 1991 (c. 29);
- (i) paragraph 5 of Schedule 2 to the Timeshare Act 1992 (c. 35);
- (j) sections 55 and 56 of and Schedule 11 to the Competition Act 1998 (c. 41);
- (k) section 351(1) to (3) and (7) of and Schedule 19 to the Financial Services and Markets Act 2000 (c. 8).

**PART 10**

INSOLVENCY

*Companies etc.*

**248 Replacement of Part II of Insolvency Act 1986**

- (1) The following shall be substituted for Part II of the Insolvency Act 1986 (c. 45) (administration orders)–

**“PART II**

ADMINISTRATION

**8 Administration**

Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect.”

- (2) The Schedule B1 set out in Schedule 16 to this Act shall be inserted after Schedule A1 to the Insolvency Act 1986.
- (3) Schedule 17 (minor and consequential amendments relating to administration) shall have effect.
- (4) The Secretary of State may by order amend an enactment in consequence of this section.
- (5) An order under subsection (4)–
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**249 Special administration regimes**

- (1) Section 248 shall have no effect in relation to–
- (a) a company holding an appointment under Chapter I of Part II of the Water Industry Act 1991 (c. 56) (water and sewerage undertakers),
  - (b) a protected railway company within the meaning of section 59 of the Railways Act 1993 (c. 43) (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996 (c. 61) (administration)),
  - (c) a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services),
  - (d) a public-private partnership company within the meaning of section 210 of the Greater London Authority Act 1999 (c. 29) (public-private partnership agreement), or
  - (e) a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).
- (2) A reference in an Act listed in subsection (1) to a provision of Part II of the Insolvency Act 1986 (or to a provision which has effect in relation to a provision of that Part of that Act) shall, in so far as it relates to a company or society listed

in subsection (1), continue to have effect as if it referred to Part II as it had effect immediately before the coming into force of section 248.

- (3) But the effect of subsection (2) in respect of a particular class of company or society may be modified by order of—
  - (a) the Treasury, in the case of building societies, or
  - (b) the Secretary of State, in any other case.
- (4) An order under subsection (3) may make consequential amendment of an enactment.
- (5) An order under subsection (3)—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (6) An amendment of the Insolvency Act 1986 (c. 45) made by this Act is without prejudice to any power conferred by Part VII of the Companies Act 1989 (c. 40) (financial markets) to modify the law of insolvency.

## 250 Prohibition of appointment of administrative receiver

- (1) The following shall be inserted after Chapter III of Part III of the Insolvency Act 1986 (receivership: receivers' powers)—

### “CHAPTER IV

#### PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER

#### **72A Floating charge holder not to appoint administrative receiver**

- (1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.
- (2) In Scotland, the holder of a qualifying floating charge in respect of a company's property may not appoint or apply to the court for the appointment of a receiver who on appointment would be an administrative receiver of property of the company.
- (3) In subsections (1) and (2)—
 

“holder of a qualifying floating charge in respect of a company's property” has the same meaning as in paragraph 14 of Schedule B1 to this Act, and

“administrative receiver” has the meaning given by section 251.
- (4) This section applies—
  - (a) to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument, and
  - (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).
- (5) An order under subsection (4)(a) may—
  - (a) make provision which applies generally or only for a specified purpose;
  - (b) make different provision for different purposes;

- (c) make transitional provision.
- (6) This section is subject to the exceptions specified in sections 72B to 72G.

**72B First exception: capital market**

- (1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—
  - (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
  - (b) the arrangement involves the issue of a capital market investment.
- (2) In subsection (1)—
  - “capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 2A, and
  - “capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

**72C Second exception: public-private partnership**

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
  - (a) is a public-private partnership project, and
  - (b) includes step-in rights.
- (2) In this section “public-private partnership project” means a project—
  - (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (3) In this section—
  - “step-in rights” has the meaning given by paragraph 6 of Schedule 2A, and
  - “project company” has the meaning given by paragraph 7 of that Schedule.

**72D Third exception: utilities**

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
  - (a) is a utility project, and
  - (b) includes step-in rights.
- (2) In this section—
  - (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
  - (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 2A,
  - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and

- (d) “project company” has the meaning given by paragraph 7 of that Schedule.

**72E Fourth exception: project finance**

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
- (a) is a financed project, and
  - (b) includes step-in rights.
- (2) In this section—
- (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
  - (b) “project company” has the meaning given by paragraph 7 of Schedule 2A, and
  - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

**72F Fifth exception: financial market**

Section 72A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of section 173 of the Companies Act 1989 (c. 40),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),
- (c) a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

**72G Sixth exception: registered social landlord**

Section 72A does not prevent the appointment of an administrative receiver of a company which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).

**72H Sections 72A to 72G: supplementary**

- (1) Schedule 2A (which supplements sections 72B to 72G) shall have effect.
- (2) The Secretary of State may by order—
- (a) insert into this Act provision creating an additional exception to section 72A(1) or (2);
  - (b) provide for a provision of this Act which creates an exception to section 72A(1) or (2) to cease to have effect;
  - (c) amend section 72A in consequence of provision made under paragraph (a) or (b);
  - (d) amend any of sections 72B to 72G;
  - (e) amend Schedule 2A.



- (3) An order under subsection (2) must be made by statutory instrument.
  - (4) An order under subsection (2) may make—
    - (a) provision which applies generally or only for a specified purpose;
    - (b) different provision for different purposes;
    - (c) consequential or supplementary provision;
    - (d) transitional provision.
  - (5) An order under subsection (2)—
    - (a) in the case of an order under subsection (2)(e), shall be subject to annulment in pursuance of a resolution of either House of Parliament,
    - (b) in the case of an order under subsection (2)(d) varying the sum specified in section 72B(1)(a) or 72E(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
    - (c) in the case of any other order under subsection (2)(a) to (d), may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”
- (2) The Schedule 2A set out in Schedule 18 to this Act shall be inserted after Schedule 2 to the Insolvency Act 1986 (c. 45).

## 251 Abolition of Crown preference

- (1) The following paragraphs of Schedule 6 to the Insolvency Act 1986 (categories of preferential debts) shall cease to have effect—
  - (a) paragraphs 1 and 2 (debts due to Inland Revenue),
  - (b) paragraphs 3 to 5C (debts due to Customs and Excise), and
  - (c) paragraphs 6 and 7 (social security contributions).
- (2) The following paragraphs of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (c. 66) (list of preferred debts) shall cease to have effect—
  - (a) paragraph 1 (debts due to Inland Revenue),
  - (b) paragraph 2 (debts due to Customs and Excise), and
  - (c) paragraph 3 (social security contributions).
- (3) In section 386 of the Insolvency Act 1986 (categories of preferential debts) for the parenthetical words after “Schedule 6 to this Act” there shall be substituted “(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)”.

## 252 Unsecured creditors

The following shall be inserted after section 176 of the Insolvency Act 1986 (winding up: preferential debt)—

*“Property subject to floating charge***176A Share of assets for unsecured creditors**

- (1) This section applies where a floating charge relates to property of a company –
  - (a) which has gone into liquidation,
  - (b) which is in administration,
  - (c) of which there is a provisional liquidator, or
  - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver –
  - (a) shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts, and
  - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if –
  - (a) the company’s net property is less than the prescribed minimum, and
  - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by –
  - (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under section 425 of the Companies Act (compromise with creditors and members).
- (5) Subsection (2) shall also not apply to a company if –
  - (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
  - (b) the court orders that subsection (2) shall not apply.
- (6) In subsections (2) and (3) a company’s net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under subsection (2) prescribing part of a company’s net property may, in particular, provide for its calculation –
  - (a) as a percentage of the company’s net property, or
  - (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this section –
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (9) In this section –

“floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2)(a) comes into force, and

“prescribed” means prescribed by order by the Secretary of State.

- (10) An order under this section may include transitional or incidental provision.”

### **253 Liquidator’s powers**

The following shall be inserted in Part I of Schedule 4 to the Insolvency Act 1986 (c. 45) (liquidator’s powers in winding up: powers exercisable only with sanction) after paragraph 3—

- “3A. Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.”

### **254 Application of insolvency law to foreign company**

- (1) The Secretary of State may by order provide for a provision of the Insolvency Act 1986 to apply (with or without modification) in relation to a company incorporated outside Great Britain.
- (2) An order under this section—
- (a) may make provision generally or for a specified purpose only,
  - (b) may make different provision for different purposes, and
  - (c) may make transitional, consequential or incidental provision.
- (3) An order under this section—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **255 Application of law about company arrangement or administration to non-company**

- (1) The Treasury may with the concurrence of the Secretary of State by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to—
- (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12),
  - (b) a society registered under section 7(1)(b), (c), (d), (e) or (f) of the Friendly Societies Act 1974 (c. 46),
  - (c) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
  - (d) an unregistered friendly society.
- (2) In subsection (1) “company arrangement or administration provision” means—
- (a) a provision of Part I of the Insolvency Act 1986 (company voluntary arrangements),
  - (b) a provision of Part II of that Act (administration), and
  - (c) section 425 of the Companies Act 1985 (c. 6) (compromise or arrangement with creditors).

- (3) An order under this section may not provide for a company arrangement or administration provision to apply in relation to a society which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).
- (4) An order under this section –
  - (a) may make provision generally or for a specified purpose only,
  - (b) may make different provision for different purposes, and
  - (c) may make transitional, consequential or incidental provision.
- (5) Provision by virtue of subsection (4)(c) may, in particular –
  - (a) apply an enactment (with or without modification);
  - (b) amend an enactment.
- (6) An order under this section –
  - (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Individuals*

### **256 Duration of bankruptcy**

- (1) The following shall be substituted for section 279 of the Insolvency Act 1986 (c. 45) (duration of bankruptcy) –

#### **“279 Duration**

- (1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.
- (2) If before the end of that period the official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt under section 289 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.
- (3) On the application of the official receiver or the trustee of a bankrupt’s estate, the court may order that the period specified in subsection (1) shall cease to run until –
  - (a) the end of a specified period, or
  - (b) the fulfilment of a specified condition.
- (4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.
- (5) In subsection (3)(b) “condition” includes a condition requiring that the court be satisfied of something.
- (6) In the case of an individual who is adjudged bankrupt on a petition under section 264(1)(d) –
  - (a) subsections (1) to (5) shall not apply, and
  - (b) the bankrupt is discharged from bankruptcy by an order of the court under section 280.

- (7) This section is without prejudice to any power of the court to annul a bankruptcy order.”
- (2) Schedule 19 (which makes transitional provision in relation to this section)—
  - (a) shall have effect, and
  - (b) is without prejudice to the generality of section 276.

### **257 Post-discharge restrictions**

- (1) The following shall be inserted after section 281 of the Insolvency Act 1986 (c. 45) (bankruptcy: effect of discharge)—

#### **“281A Post-discharge restrictions**

Schedule 4A to this Act (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.”

- (2) The Schedule 4A set out in Schedule 20 to this Act shall be inserted after Schedule 4 to the Insolvency Act 1986.
- (3) The amendments set out in Schedule 21 (which specify the effect of a bankruptcy restrictions order or undertaking) shall have effect.

### **258 Investigation by official receiver**

The following shall be substituted for section 289 of the Insolvency Act 1986 (official receiver’s duty to investigate)—

#### **“289 Investigatory duties of official receiver**

- (1) The official receiver shall—
  - (a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and
  - (b) make such report (if any) to the court as the official receiver thinks fit.
- (2) Subsection (1) shall not apply to a case in which the official receiver thinks an investigation under that subsection unnecessary.
- (3) Where a bankrupt makes an application for discharge under section 280—
  - (a) the official receiver shall make a report to the court about such matters as may be prescribed, and
  - (b) the court shall consider the report before determining the application.
- (4) A report by the official receiver under this section shall in any proceedings be prima facie evidence of the facts stated in it.”

### **259 Income payments order**

- (1) Section 310 of the Insolvency Act 1986 (income payments order) shall be amended as follows.
- (2) In subsection (1) omit “, on the application of the trustee,”.

- (3) After subsection (1) insert—
- “(1A) An income payments order may be made only on an application instituted—
- (a) by the trustee, and
  - (b) before the discharge of the bankrupt.”
- (4) For subsection (6) substitute—
- “(6) An income payments order must specify the period during which it is to have effect; and that period—
- (a) may end after the discharge of the bankrupt, but
  - (b) may not end after the period of three years beginning with the date on which the order is made.
- (6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).”

## 260 Income payments agreement

The following shall be inserted after section 310 of the Insolvency Act 1986 (c. 45) (income payments order)—

### “310A Income payments agreement

- (1) In this section “income payments agreement” means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—
  - (a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt’s income for a specified period, or
  - (b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.
- (2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.
- (3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.
- (4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—
  - (a) subsection (5) (receipts to form part of estate), and
  - (b) subsections (7) to (9) (meaning of income).
- (5) An income payments agreement must specify the period during which it is to have effect; and that period—
  - (a) may end after the discharge of the bankrupt, but
  - (b) may not end after the period of three years beginning with the date on which the agreement is made.

- (6) An income payments agreement may (subject to subsection (5)(b)) be varied –
  - (a) by written agreement between the parties, or
  - (b) by the court on an application made by the bankrupt, the trustee or the official receiver.
- (7) The court –
  - (a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and
  - (b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).”

## 261 Bankrupt’s home

- (1) The following shall be inserted after section 283 of the Insolvency Act 1986 (definition of bankrupt’s estate) –

### “283A Bankrupt’s home ceasing to form part of estate

- (1) This section applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of –
  - (a) the bankrupt,
  - (b) the bankrupt’s spouse, or
  - (c) a former spouse of the bankrupt.
- (2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall –
  - (a) cease to be comprised in the bankrupt’s estate, and
  - (b) vest in the bankrupt (without conveyance, assignment or transfer).
- (3) Subsection (2) shall not apply if during the period mentioned in that subsection –
  - (a) the trustee realises the interest mentioned in subsection (1),
  - (b) the trustee applies for an order for sale in respect of the dwelling-house,
  - (c) the trustee applies for an order for possession of the dwelling-house,
  - (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
  - (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.
- (4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application –
  - (a) cease to be comprised in the bankrupt’s estate, and

- 
- (b) vest in the bankrupt (without conveyance, assignment or transfer).
  - (5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2) –
    - (a) shall not begin with the date of the bankruptcy, but
    - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt’s interest.
  - (6) The court may substitute for the period of three years mentioned in subsection (2) a longer period –
    - (a) in prescribed circumstances, and
    - (b) in such other circumstances as the court thinks appropriate.
  - (7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
  - (8) The rules may also, in particular, make provision –
    - (a) requiring or enabling the trustee of a bankrupt’s estate to give notice that this section applies or does not apply;
    - (b) about the effect of a notice under paragraph (a);
    - (c) requiring the trustee of a bankrupt’s estate to make an application to the Chief Land Registrar.
  - (9) Rules under subsection (8)(b) may, in particular –
    - (a) disapply this section;
    - (b) enable a court to disapply this section;
    - (c) make provision in consequence of a disapplication of this section;
    - (d) enable a court to make provision in consequence of a disapplication of this section;
    - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”
  - (2) Section 313 of the Insolvency Act 1986 (c. 45) (charge on bankrupt’s home) shall be amended as follows –
    - (a) in subsection (2) for “, up to the value from time to time of the property secured,” substitute “, up to the charged value from time to time,”
    - (b) after subsection (2) insert –
      - “(2A) In subsection (2) the charged value means –
        - (a) the amount specified in the charging order as the value of the bankrupt’s interest in the property at the date of the order, plus
        - (b) interest on that amount from the date of the charging order at the prescribed rate.
      - (2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.”, and
    - (c) at the end insert –



“(5) But an order under section 3(5) of that Act may not vary a charged value.”

(3) The following shall be inserted after section 313 of that Act –

**“313A Low value home: application for sale, possession or charge**

(1) This section applies where –

(a) property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of –

- (i) the bankrupt,
- (ii) the bankrupt’s spouse, or
- (iii) a former spouse of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

(2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

(3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).”

(4) The following shall be inserted after section 307(2)(a) of the Insolvency Act 1986 (c. 45) (after-acquired property: exclusions) –

“(aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,”.

(5) In section 384(2) of that Act (prescribed amounts) after “section 273;” insert –  
“section 313A;”.

(6) In section 418(1) of that Act (monetary limits in bankruptcy) after the entry for section 273 insert –

“section 313A (value of property below which application for sale, possession or charge to be dismissed);”.

(7) In subsection (8) –

(a) “pre-commencement bankrupt” means an individual who is adjudged bankrupt on a petition presented before subsection (1) above comes into force, and

(b) “the transitional period” is the period of three years beginning with the date on which subsection (1) above comes into force.

(8) If a pre-commencement bankrupt’s estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall –

(a) cease to be comprised in the estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(9) But subsection (8) shall not apply if before or during the transitional period –

- 
- (a) any of the events mentioned in section 283A(3) of the Insolvency Act 1986 (c. 45) (inserted by subsection (1) above) occurs in relation to the interest or the dwelling-house, or
  - (b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.
- (10) Subsections 283A(4) to (9) of that Act shall have effect, with any necessary modifications, in relation to the provision made by subsections (7) to (9) above; in particular—
- (a) a reference to the period mentioned in section 283A(2) shall be construed as a reference to the transitional period,
  - (b) in the application of section 283A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which subsection (1) above comes into force, and
  - (c) a reference to the rules is a reference to rules made under section 412 of the Insolvency Act 1986 (for which purpose this section shall be treated as forming part of Parts VIII to XI of that Act).

## **262 Powers of trustee in bankruptcy**

The following shall be inserted in Part I of Schedule 5 to the Insolvency Act 1986 (powers of trustee in bankruptcy: powers exercisable only with sanction) after paragraph 2—

“2A. Power to bring legal proceedings under section 339, 340 or 423.”

## **263 Repeal of certain bankruptcy offences**

The following sections of the Insolvency Act 1986 shall cease to have effect—

- (a) section 361 (offence of failure to keep proper accounting records), and
- (b) section 362 (offence of gambling and speculation).

## **264 Individual voluntary arrangement**

- (1) Schedule 22 (which makes provision about individual voluntary arrangements) shall have effect.
- (2) The Secretary of State may by order amend the Insolvency Act 1986 so as to extend the provisions of sections 263B to 263G (which are inserted by Schedule 22 and provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in section 263A as inserted by Schedule 22.
- (3) An order under subsection (2)—
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by each House of Parliament.
- (4) An order under subsection (2) may make—
  - (a) consequential provision (which may include provision amending the Insolvency Act 1986 or another enactment);
  - (b) transitional provision.

## **265 Disqualification from office: justice of the peace**

Section 65 of the Justices of the Peace Act 1997 (c. 25) (disqualification of bankrupt from appointment as justice of the peace) shall cease to have effect.

## **266 Disqualification from office: Parliament**

- (1) The following shall be inserted before section 427 of the Insolvency Act 1986 (c. 45) (the title to which becomes “Disqualification from Parliament (Scotland and Northern Ireland)”)—

### **“426A Disqualification from Parliament (England and Wales)**

- (1) A person in respect of whom a bankruptcy restrictions order has effect shall be disqualified—
  - (a) from membership of the House of Commons,
  - (b) from sitting or voting in the House of Lords, and
  - (c) from sitting or voting in a committee of the House of Lords or a joint committee of both Houses.
- (2) If a member of the House of Commons becomes disqualified under this section, his seat shall be vacated.
- (3) If a person who is disqualified under this section is returned as a member of the House of Commons, his return shall be void.
- (4) No writ of summons shall be issued to a member of the House of Lords who is disqualified under this section.
- (5) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the House of Commons or the House of Lords the court shall notify the Speaker of that House.
- (6) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.

### **426B Devolution**

- (1) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the court shall notify the presiding officer of that body.
- (2) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the Secretary of State shall notify the presiding officer of that body.

### **426C Irrelevance of privilege**

- (1) An enactment about insolvency applies in relation to a member of the House of Commons or the House of Lords irrespective of any Parliamentary privilege.
- (2) In this section “enactment” includes a provision made by or under—

- (a) an Act of the Scottish Parliament, or
  - (b) Northern Ireland legislation.”
- (2) In section 427 of the Insolvency Act 1986 the following shall cease to have effect –
  - (a) in subsection (1), the words “England and Wales or”, and
  - (b) subsection (7).
- (3) The Secretary of State may by order –
  - (a) provide for section 426A or 426B of that Act (as inserted by subsection (1) above) to have effect in relation to orders made or undertakings accepted in Scotland or Northern Ireland under a system which appears to the Secretary of State to be equivalent to the system operating under Schedule 4A to that Act (as inserted by section 257 of this Act);
  - (b) make consequential amendment of section 426A or 426B of that Act (as inserted by subsection (1) above);
  - (c) make other consequential amendment of an enactment.
- (4) An order under this section may make transitional, consequential or incidental provision.
- (5) An order under this section –
  - (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### **267 Disqualification from office: local government**

- (1) The following shall be substituted for section 80(1)(b) of the Local Government Act 1972 (c. 70) (disqualification for membership of local authority: bankrupt) –
  - “(b) is the subject of a bankruptcy restrictions order or interim order;”.
- (2) Section 81(1) and (2) of that Act (which amplify the provision substituted by subsection (1) above) shall cease to have effect.

#### **268 Disqualification from office: general**

- (1) The Secretary of State may make an order under this section in relation to a disqualification provision.
- (2) A “disqualification provision” is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from –
  - (a) being elected or appointed to an office or position,
  - (b) holding an office or position, or
  - (c) becoming or remaining a member of a body or group.
- (3) In subsection (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.

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- (4) An order under subsection (1) may repeal or revoke the disqualification provision.
  - (5) An order under subsection (1) may amend, or modify the effect of, the disqualification provision—
    - (a) so as to reduce the class of bankrupts to whom the disqualification provision applies;
    - (b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;
    - (c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;
    - (d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.
  - (6) An order by virtue of subsection (5)(d) may provide for a discretion to be subject to—
    - (a) the approval of a specified person or body;
    - (b) appeal to a specified person or body.
  - (7) An order by virtue of subsection (5)(d) made with the concurrence of the Lord Chancellor may provide for a discretion to be subject to appeal to a specified court or tribunal.
  - (8) The Secretary of State may specify himself for the purposes of subsection (5)(d) or (6)(a) or (b).
  - (9) In this section “bankrupt” means an individual—
    - (a) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland,
    - (b) whose estate has been sequestrated by a court in Scotland, or
    - (c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.
  - (10) In this section “bankruptcy restrictions regime” means an order or undertaking—
    - (a) under Schedule 4A to the Insolvency Act 1986 (c. 45) (bankruptcy restrictions orders), or
    - (b) under any system operating in Scotland or Northern Ireland which appears to the Secretary of State to be equivalent to the system operating under that Schedule.
  - (11) In this section—

“body” includes Parliament and any other legislative body, and

“provision” means—

    - (a) a provision made by an Act of Parliament passed before or in the same Session as this Act, and
    - (b) a provision made, before or in the same Session as this Act, under an Act of Parliament.
  - (12) An order under this section—
    - (a) may make provision generally or for a specified purpose only,
    - (b) may make different provision for different purposes, and
    - (c) may make transitional, consequential or incidental provision.

- (13) An order under this section—
- (a) must be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (14) A reference in this section to the Secretary of State shall be treated as a reference to the National Assembly for Wales in so far as it relates to a disqualification provision which—
- (a) is made by the National Assembly for Wales, or
  - (b) relates to a function of the National Assembly.
- (15) Provision made by virtue of subsection (7) is subject to any order of the Lord Chancellor under section 56(1) of the Access to Justice Act 1999 (c. 22) (appeals: jurisdiction).

## 269 Minor and consequential amendments

Schedule 23 (minor and consequential amendments relating to individual insolvency) shall have effect.

### *Money*

## 270 Fees

- (1) The following shall be inserted after section 415 of the Insolvency Act 1986 (c. 45) (fees orders: individual insolvency)—

### **“415A Fees orders (general)**

- (1) The Secretary of State—
- (a) may by order require a body to pay a fee in connection with the grant or maintenance of recognition of the body under section 391, and
  - (b) may refuse recognition, or revoke an order of recognition under section 391(1) by a further order, where a fee is not paid.
- (2) The Secretary of State—
- (a) may by order require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under section 393, and
  - (b) may disregard an application or withdraw an authorisation where a fee is not paid.
- (3) The Secretary of State may by order require the payment of fees in respect of—
- (a) the operation of the Insolvency Services Account;
  - (b) payments into and out of that Account.
- (4) The following provisions of section 414 apply to fees under this section as they apply to fees under that section—
- (a) subsection (3) (manner of payment),
  - (b) subsection (5) (additional provision),
  - (c) subsection (6) (statutory instrument),

- (d) subsection (7) (payment into Consolidated Fund), and
  - (e) subsection (9) (saving for rules of court).”
- (2) An order made by virtue of subsection (1) may relate to the maintenance of recognition or authorisation granted before this section comes into force.
- (3) At the end of section 392 of the Insolvency Act 1986 (c. 45) (authorisation of insolvency practitioner) there shall be added –
- “(9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).”
- (4) In section 440(2)(c) of that Act (provisions not extending to Scotland) after “415,” there shall be inserted “415A(3),”.

### **271 Insolvency Services Account: interest**

- (1) The following shall be inserted after paragraph 16 of Schedule 8 to the Insolvency Act 1986 (company insolvency rules: money)–
- “16A. Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.”
- (2) The following shall be inserted after paragraph 21 of Schedule 9 to the Insolvency Act 1986 (individual insolvency rules: money)–
- “21A. Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.”

### **272 Insolvency Services Accounts**

- (1) Section 405 of the Insolvency Act 1986 (operation of Investment Account) shall cease to have effect.
- (2) The following shall be substituted for section 408 of that Act (recourse to Consolidated Fund)–

#### **“408 Adjustment of balances**

- (1) The Treasury may direct the payment out of the Consolidated Fund of sums into –
- (a) the Insolvency Services Account;
  - (b) the Investment Account.
- (2) The Treasury shall certify to the House of Commons the reason for any payment under subsection (1).
- (3) The Secretary of State may pay sums out of the Insolvency Services Account into the Consolidated Fund.
- (4) The National Debt Commissioners may pay sums out of the Investment Account into the Consolidated Fund.”

**PART 11**

## SUPPLEMENTARY

**273 Interpretation**

In this Act –

- “the 1973 Act” means the Fair Trading Act 1973 (c. 41);
- “the 1998 Act” means the Competition Act 1998 (c. 41);
- “the Commission” means the Competition Commission;
- “the Director” means the Director General of Fair Trading; and
- “the OFT” means the Office of Fair Trading.

**274 Provision of financial assistance for consumer purposes**

The Secretary of State may give financial assistance to any person for the purpose of assisting –

- (a) activities which the Secretary of State considers are of benefit to consumers; or
- (b) the provision of –
  - (i) advice or information about consumer matters;
  - (ii) educational materials relating to consumer matters; or
  - (iii) advice or information to the Secretary of State in connection with the formulation of policy in respect of consumer matters.

**275 Financial provision**

There shall be paid out of money provided by Parliament –

- (a) any expenditure incurred by the OFT, the Secretary of State, any other Minister of the Crown or a government department by virtue of this Act; and
- (b) any increase attributable to this Act in the sums payable out of money so provided by virtue of any other Act.

**276 Transitional or transitory provision and savings**

- (1) Schedule 24 (which makes transitional and transitory provisions and savings) has effect.
- (2) The Secretary of State may by order made by statutory instrument make such transitional or transitory provisions and savings as he considers appropriate in connection with the coming into force of any provision of this Act.
- (3) An order under subsection (2) may modify any Act or subordinate legislation.
- (4) Schedule 24 does not restrict the power under subsection (2) to make other transitional or transitory provisions and savings.

**277 Power to make consequential amendments etc.**

- (1) The Secretary of State may by order make such supplementary, incidental or consequential provision as he thinks appropriate –
  - (a) for the general purposes, or any particular purpose, of this Act; or



- (b) in consequence of any provision made by or under this Act or for giving full effect to it.
- (2) An order under this section may –
  - (a) modify any Act or subordinate legislation (including this Act);
  - (b) make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (3) The power to make an order under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The power conferred by this section is not restricted by any other provision of this Act.

### **278 Minor and consequential amendments and repeals**

- (1) Schedule 25 (which contains minor and consequential amendments) has effect.
- (2) Schedule 26 (which contains repeals and revocations) has effect.

### **279 Commencement**

The preceding provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

### **280 Extent**

- (1) Sections 256 to 265, 267, 269 and 272 extend only to England and Wales.
- (2) Sections 204, 248 to 255 and 270 extend only to England and Wales and Scotland (but subsection (3) of section 415A as inserted by section 270 extends only to England and Wales).
- (3) Any other modifications by this Act of an enactment have the same extent as the enactment being modified.
- (4) Otherwise, this Act extends to England and Wales, Scotland and Northern Ireland.

### **281 Short title**

This Act may be cited as the Enterprise Act 2002.

## 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.

*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.

*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.
  - (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 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.
- (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.

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*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 sub-paragraph (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.
- (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 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 –
- “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.

*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.

*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

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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 –
- (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);
  - (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
  - (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.
- (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.
- 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.”
- 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.
- (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 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, 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

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- (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—
    - (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.

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- (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–
    - (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) –
- (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.

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- (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.
- (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.
  - (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.
- 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.
  - (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.
- (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 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;
  - (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;
- (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.
- (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.
- 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.
  - (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.

## SCHEDULE 8

Section 86(4)

### PROVISION THAT MAY BE CONTAINED IN CERTAIN ENFORCEMENT ORDERS

#### *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.

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*General restrictions on conduct*

- 2 (1) An order may –
  - (a) prohibit the making or performance of an agreement;
  - (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.
  - (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;
- (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 sub-paragraph (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.
- (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.

*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

- (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)*

- 1 (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 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.”

*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.”

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”.
- (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
- (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 –
- “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.”

- 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
  - (b) at the end of the subsection there shall be inserted—  
““the 2002 Act” means the Enterprise Act 2002;”.

*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—

**“18 Modification by order under other statutory provisions**

- (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 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 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”.
- (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.”

*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 (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.
- (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.

*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 –

“(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.
- (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 –
- “(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 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 –
- “(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).”
- (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".
- 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

#### *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.
- (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.
- (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.

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



- (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 –
- “(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.”
- 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.
- (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.”
- 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”.

## 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 –
- (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.”

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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.
- 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”).

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 Articles 86 to 99 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.

## SCHEDULE 14

Sections 238 and 243

## SPECIFIED FUNCTIONS

Parts 2, 3, 4, 5, 6, 7, 8 and 11 of the Fair Trading Act 1973 (c. 41).

Trade Descriptions Act 1968 (c. 29).

Prices Act 1974 (c. 24).

Consumer Credit Act 1974 (c. 39).

Estate Agents Act 1979 (c. 38).

Competition Act 1980 (c. 21).

Consumer Protection Act 1987 (c. 43).

Property Misdescriptions Act 1991 (c. 29).

Timeshare Act 1992 (c. 35).

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.

## SCHEDULE 15

Section 241

## ENACTMENTS CONFERRING FUNCTIONS

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.

Consumer Credit Act 1974.

Gun Barrel Proof Act 1978 (c. 9).

Estate Agents Act 1979.

Competition Act 1980.

National Audit Act 1983 (c. 44).

Telecommunications Act 1984 (c. 12).

Companies Act 1985 (c. 6).

Weights and Measures Act 1985 (c. 72).

Airports Act 1986 (c. 31).  
Gas Act 1986 (c. 44).  
Financial Services Act 1986 (c. 60).  
Consumer Protection Act 1987 (c. 43).  
Copyright, Designs and Patents Act 1988 (c. 48).  
Water Act 1989 (c. 15).  
Electricity Act 1989 (c. 29).  
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).  
Timeshare Act 1992 (c. 35).  
Railways Act 1993 (c. 43).  
Coal Industry Act 1994 (c. 21).  
Trade Marks Act 1994 (c. 26).  
Gas Act 1995 (c. 45).  
Broadcasting Act 1996 (c. 55).  
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).  
Part 1 of the Transport Act 2000 (c. 38).

## 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.

*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.
- (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,
  - (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.

#### *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.

- (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) –
- “(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.
- (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.

*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
  - (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.
  - (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 –
- (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,
  - (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,
  - (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.
- (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.
- (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,
  - (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.

### *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.
- (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.
- (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.
- (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—
  - (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.
- 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.

*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.
- (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;
  - (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.
- (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 subparagraph (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
  - (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 subparagraph (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 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
  - (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.
- (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 –
- (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 person who appointed him,
  - (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 person who appointed him,
  - (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,
  - (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) –
- “(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 –
- (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—
- (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.
- 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.

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- (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
  - (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.
- (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 –
- "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 donee 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 donee 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.
- (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.

## 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 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;
  - (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.”
- 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—
- “(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,
  - (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”.
- (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—
- “(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).”
- 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.”
- (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.

## Schedule 17 – Administration: minor and consequential amendments

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 declaration where administrator appointed 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. 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 creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
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 administration where objective achieved.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
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.”
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(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
- (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 –
- “(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) –
- (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.

(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,
    - (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 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.”
- 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
  - (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,
  - (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.
- (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 –
- (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
  - “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 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.

*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
  - (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).

*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.

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.
- (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
  - (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,
  - (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.
- (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,
  - (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.
- (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.

#### **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)—
- (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  
     (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;
  - (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.

*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 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, 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 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.
- (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 –
    - (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
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*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.

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.
- (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)."

*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;

- (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 sub-paragraph (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”.

*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 –
  - “The Competition Service.”

*Fair Trading Act 1973 (c. 41)*

- 5 (1) The 1973 Act is amended as follows.
- (2) In section 5 (principal functions of Commission), in subsection (2) –

- (a) for “the Director” there is substituted “the Office of Fair Trading”;
  - (b) for “his” (in each place) there is substituted “its”.
- (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) for “the Director” there is substituted “the Office of Fair Trading”;
    - (ii) for “Parts IV, V, VI” there is substituted “Part 5”;
    - (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.”

*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”;
  - (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”.
- (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”.
- (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.
- (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”.

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*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 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”.

*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";
  - (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”.

*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);
  - (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;
      - (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).
- (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”
  - “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—

**“23 Action following report by Competition Commission**

- (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.
  - (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)–
    - (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) 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) In section 13 (licence modification references to Commission), subsections (9) and (9A) 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 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.

### 13B 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) 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 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) 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) 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) 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)—
- (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.”

*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).
- (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.
  - (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”.
- (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”.

*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
  - (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 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
      - (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 –
- “(ii) 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.”.
- (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.
- (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 (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”.

*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 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
      - (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 7 to, 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”.

*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 –

**“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.
  - (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
- (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 –
- (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 –
- “(ii) 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) –
- (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
  - (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.
- (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.”

*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;
    - (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;
  - (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.

*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*”;
- (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.
- (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”;
  - (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) In section 2 (regulation by Commission of provision of television services), in subsection (3)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) for “any of his or their” there is substituted “any of their”.
- (3) In section 39 (networking arrangements between holders of regional Channel 3 licences)—
- (a) in subsection (2), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in subsection (3)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “he” there is substituted “it”;
  - (c) in subsection (12)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “him” there is substituted “it”.
- (4) In section 85 (licensing functions of Authority), in subsection (4)—

- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) for “any of his or their” there is substituted “any of their”.
- (5) In section 186 (duty of BBC to include independent productions in their television services)–
- (a) in subsection (3)–
    - (i) for “The Director General of Fair Trading (“the Director)” there is substituted “The Office of Fair Trading (“the OFT)”;
    - (ii) for “his” there is substituted “its”;
  - (b) in subsection (4)–
    - (i) for “the Director” there is substituted “the OFT”;
    - (ii) for “his” (in each place) there is substituted “its”;
    - (iii) for “him” there is substituted “it”;
  - (c) in subsection (5), for “Director” (in both places) there is substituted “OFT”;
  - (d) in subsection (6)–
    - (i) for “Director” (in each place) there is substituted “OFT”;
    - (ii) for “him” there is substituted “it”;
    - (iii) for “he” (in each place) there is substituted “it”;
  - (e) in subsections (7) and (8), for “the Director” there is substituted “the OFT”.
- (6) In section 187 (information to be furnished by BBC for purposes of reports under section 186)–
- (a) in subsection (1)–
    - (i) for “Director” there is substituted “Office of Fair Trading”;
    - (ii) for “him” (in both places) there is substituted “it”;
    - (iii) for “he” there is substituted “it”;
  - (b) subsection (3) shall cease to have effect.
- (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) In section 197 (restriction on disclosure of information)–
- (a) in subsection (2)(a)(ii)–
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) after “the Competition Act 1998” there is inserted “, the Enterprise Act 2002”;
  - (b) in subsection (2)(c), after “the Competition Act 1998” there is inserted “, the Enterprise Act 2002”.
- (9) In Schedule 4 (references with respect to networking arrangements)–

- (a) in paragraph 1—
  - (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “the Office of Fair Trading (“the OFT”)”;
  - (ii) for “Director” (in each place), “he” (in each place), “his” (in each place) and “Director’s” there is substituted “OFT”, “it”, “its” and “OFT’s” respectively;and in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;
- (b) in paragraph 2, in sub-paragraph (3), for “Director” there is substituted “OFT”;
- (c) in paragraph 3, for “Director’s” (in both places) and “Director” there is substituted “OFT’s” and “OFT” respectively, and, in the cross-heading before that paragraph, for “*Director’s*” there is substituted “*OFT’s*”;
- (d) in paragraph 4—
  - (i) for “Director’s” (in both places), “Director”, “him” and “he” there is substituted “OFT’s”, “OFT”, “it” and “it” respectively;
  - (ii) sub-paragraphs (7) and (7A) shall cease to have effect;
- (e) after paragraph 4 there is inserted—

*“Further provision about references under paragraph 4*

- 4A (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 references under paragraph 4 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)(ii) shall, in its application by virtue of sub-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 sub-paragraph (1), have effect in relation to those sections as applied by virtue of that sub-paragraph.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that sub-paragraph.”;
- (f) in paragraph 5–
- (i) for “Director” (in each place) there is substituted “OFT”;
- (ii) sub-paragraph (5) shall cease to have effect;
- (iii) after sub-paragraph (5) there is inserted –
- “(5A) For the purposes of paragraph 6, 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.
- (5B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 4 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.
- (5C) 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 4.
- (5D) In making any report on a reference under paragraph 4 the Competition Commission must have regard to the following considerations before disclosing any information.
- (5E) 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.
- (5F) 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.



- (5G) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5F)(a) or (b) is necessary for the purposes of the report.”;
- (g) in paragraph 6, for “Director” (in each place) there is substituted “OFT”;
- (h) in paragraph 7, for “Director” (in each place), “he” (in each place) and “him” there is substituted “OFT”, “it” and “it” respectively, and, in the cross-heading before that paragraph, for “*Director*” there is substituted “OFT”;
- (i) in paragraph 8–
- (i) for “Director” (in each place) there is substituted “OFT”;
  - (ii) in sub-paragraph (1)(b), for “him” there is substituted “the OFT” and for “he” there is substituted “it”;
  - (iii) sub-paragraphs (3) and (4) shall cease to have effect;
- (j) after paragraph 8 there is inserted –

*“Enforcement*

- 8A (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 8(1).
- (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 8(1).
- (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 or Northern Ireland, means the High Court, and
  - (b) in relation to Scotland, means the Court of Session.
- 8B (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 8(1).
- (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;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

*False or misleading information*

8C (1) A person commits an offence if—

- (a) he supplies any information to the OFT or the Competition Commission in connection with any of their functions under this Schedule;
- (b) the information is false or misleading in a material respect; and
- (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

(2) A person commits an offence if he—

- (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
- (b) recklessly supplies any information to another person which is false or misleading in a material respect;

knowing that the information is to be used for the purpose of supplying information to the OFT or the Competition Commission in connection with any of their functions under this Schedule.

(3) A person who commits an offence under sub-paragraph (1) or (2) 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.

(4) This paragraph shall not have effect in relation to the supplying of information to the Competition Commission in connection with its functions under any provision of the Enterprise Act 2002 as applied by virtue of paragraph 4A.”;

(k) in paragraph 9, for “Director” and “his” (in each place) there is substituted “OFT” and “its” respectively, and, in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;

(l) in paragraph 10—

- (i) the definition of “the Director” shall cease to have effect;
- (ii) after the definition of “the ITC” there is inserted—  
“the OFT” means the Office of Fair Trading.”

*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 –

**“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.
- (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
  - (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.”

*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 –

**“15A References under Article 15: time limits**

- (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.

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

- (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
  - (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 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”.

*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
  - (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
  - (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—
    - “(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)–
- (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—
- “(ii) 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.”.
- (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)”.
- (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 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.

*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 –
- “(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.
- (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 –
- “(ii) 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.”

*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 –
- “(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—

**“35A References under Article 34: time limits**

- (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)—
  - (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 subparagraph (a) to the airport operator concerned and the Department.

**35B References under Article 34: powers of investigation**

- (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 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”.

*Broadcasting Act 1996 (c. 55)*

- 34 (1) The Broadcasting Act 1996 is amended as follows.
- (2) In section 142 (standards for transmission hit), in subsection (6), for paragraph (f) there is substituted –
- (f) the Office of Fair Trading”.

*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 —

**“15A References under Article 15: time limits**

- (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 holder of the licence or, as the case may be, the relevant licence holders.

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

- (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
    - (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;
  - (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”.

*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”;
  - (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;
  - (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.

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- (31) In section 39 (limited immunity for small agreements), for “Director” (in each place), “he” (in both places) and “his” (in both places) there is substituted “OFT”, “it” and “its” respectively.
- (32) In section 40 (limited immunity in relation to the Chapter 2 prohibition)–
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (4), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;
  - (c) in subsection (5), for “his” there is substituted “its”.
- (33) In section 41 (agreements notified to the Commission), for “Director” there is substituted “OFT”.
- (34) In section 44 (false or misleading information), for “Director” (in each place) and “his” there is substituted “OFT” and “its” respectively.
- (35) In section 45 (the Competition Commission), after subsection (7) there is inserted –
- “(8) The Secretary of State may by order make such modifications in Part 2 of Schedule 7 and in Schedule 7A (performance of the Competition Commission’s general functions) as he considers appropriate for improving the performance by the Competition Commission of its functions.”
- (36) In section 46 (appealable decisions), for “Director” (in each place) there is substituted “OFT”.
- (37) In section 50 (vertical agreements and land agreements), for “Director” there is substituted “OFT”.
- (38) In section 51 –
- (a) in subsection (1), for “Director” and “he” there is substituted “OFT” and “it” respectively;
  - (b) in subsection (2), for “Director’s” there is substituted “OFT’s”;
  - (c) in subsection (3), for “Director” and “he” (in both places) there is substituted “OFT” and “it” respectively;
  - (d) in subsections (5) to (9), for “Director” (in each place) there is substituted “OFT”;
  - (e) in subsection (10), for “Director” and “his” there is substituted “OFT” and “its”;
- and in the cross-heading before that section, for “*Director’s*” there is substituted “*OFT’s*”.
- (39) In section 52 (advice and information)–
- (a) in subsections (2) and (3), for “Director” there is substituted “OFT”;
  - (b) in subsection (4), for “Director” and “him” there is substituted “OFT” and “it” respectively;
  - (c) in subsection (5), for “Director” and “he” there is substituted “OFT” and “it” respectively;
  - (d) in subsection (6), for “Director” and “he” (in both places) there is substituted “OFT” and “it” respectively;
  - (e) in subsection (8), for “Director” there is substituted “OFT”.
- (40) In section 53 (fees), for “Director” (in each place) and “him” there is substituted “OFT” and “it” respectively.
- (41) In section 54 (regulators)–

- (a) in subsection (1), for the words from “any person” to the end of the subsection there is substituted “ –
- (a) the Director General of Telecommunications;
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Director General of Electricity Supply for Northern Ireland;
  - (d) the Director General of Water Services;
  - (e) the Rail Regulator;
  - (f) the Director General of Gas for Northern Ireland; and
  - (g) the Civil Aviation Authority.”;
- (b) for “Director” (in each place) there is substituted “OFT”.
- (42) In section 57 (defamation), for “Director” and “his” there is substituted “OFT” and “its” respectively.
- (43) In section 58 (findings of fact by Director) –
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) for “a Director’s” (in both places) there is substituted “an OFT’s”;
- and in the cross-heading before that section, for “*Director*” there is substituted “*OFT*”.
- (44) In section 59 (interpretation of Part 1) –
- (a) in subsection (1), the definition of “the Director” shall cease to have effect and after the definition of “officer” there is inserted –  
““the OFT” means the Office of Fair Trading;”;
  - (b) in subsection (4), for “Director” and “he” there is substituted “OFT” and “it” respectively.
- (45) In section 60 (principles to be applied in determining questions), for “Director” (in both places) there is substituted “OFT”.
- (46) In section 61 (introduction) –
- (a) in subsection (1) –
    - (i) in the definition of “authorised officer”, for “Director” there is substituted “OFT”;
    - (ii) the definition of “the Director” shall cease to have effect;
    - (iii) after the definition of “Commission investigation” there is inserted –  
““the OFT” means the Office of Fair Trading;”;
    - (iv) for ““Director’s investigation” means an investigation conducted by the Director” there is substituted ““OFT’s investigation” means an investigation conducted by the OFT”;
    - (v) for ““Director’s special investigation” means a Director’s” there is substituted ““OFT’s special investigation” means an OFT’s”;
    - (vi) in the definition of “premises”, for “a Director’s” there is substituted “an OFT’s”;
  - (b) in subsection (2) –
    - (i) for “a Director’s” there is substituted “an OFT’s”;
    - (ii) for “Director” there is substituted “OFT”;
  - (c) in subsection (3), for “Director” there is substituted “OFT”.
- (47) In section 62 (power to enter premises: Commission investigation) –

- (a) in subsection (1), for “Director” there is substituted “OFT”, and
  - (b) in subsection (5)–
    - (i) in paragraph (a), for “Director” there is substituted “OFT”;
    - (ii) in paragraph (b), for “his officers whom he” there is substituted “the OFT’s officers whom the OFT”.
- (48) In section 63 (power to enter premises: Director’s special investigations)–
- (a) in subsection (1), for “Director, that a Director’s” there is substituted “OFT, that an OFT’s”;
  - (b) in subsections (2) to (4), for “A Director’s” and “Director” there is substituted “An OFT’s” and “OFT” respectively;
  - (c) in subsection (5), for “Director” there is substituted “OFT”;
  - (d) in the sidenote, for “Director’s” there is substituted “OFT’s”.
- (49) In section 71 (regulations, orders and rules), in subsection (4), after paragraph (c) there is inserted –
- “(ca) section 45(8).”.
- (50) In Schedule 1 (exclusions: mergers and concentrations)–
- (a) in paragraph 1–
    - (i) in sub-paragraph (1), for the words from “Part V” to “1973 Act)” there is substituted “Part 3 of the Enterprise Act 2002 (“the 2002 Act)”);
    - (ii) in sub-paragraph (4), for “Section 65 of the 1973 Act” there is substituted “Section 26 of the 2002 Act”;
  - (b) in paragraph 2–
    - (i) in sub-paragraph (1)(a), for “Part V of the 1973 Act” there is substituted “Part 3 of the 2002 Act”;
    - (ii) in sub-paragraph (2), for “Section 65 of the 1973 Act” there is substituted “Section 26 of the 2002 Act”;
  - (c) in paragraph 4–
    - (i) for “Director” (in each place) there is substituted “OFT”;
    - (ii) in sub-paragraph (2), for “he” (in both places) and “him” there is substituted “it” and “the OFT” respectively;
    - (iii) in sub-paragraph (5), for “he” (in both places) there is substituted “it”;
  - (d) in paragraph 5, for paragraphs (a) to (d) there is substituted –
    - “(a) the OFT or (as the case may be) the Secretary of State has published its or his decision not to make a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;
    - (b) the OFT or (as the case may be) the Secretary of State has made a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a relevant merger situation or (as the case may be) a special merger situation;
    - (c) the agreement does not fall within paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being

regarded under section 26 of the 2002 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or

- (d) the OFT has made a reference to the Competition Commission under section 32 of the Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of any two or more water enterprises of the kind to which that section applies.”

(51) In Schedule 3 (general exclusions)–

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

(52) In Schedule 5 (notification under Chapter 1: procedure)–

- (a) for “Director” (in each place) there is substituted “OFT”;
- (b) in paragraph 3, for “he” (in the first place) and “his” there is substituted “it” and “its” respectively;
- (c) in paragraph 5(2)–
- (i) for “he thinks” there is substituted “it thinks”;
  - (ii) for “bringing it” there is substituted “bringing the application”;
  - (iii) for “he is” there is substituted “the OFT is”;
  - (iv) the words “for him” shall cease to have effect;
- (d) in paragraph 5(3), for “him” there is substituted “it”;
- (e) in paragraph 6, for “he” and “his” (in both places) there is substituted “it” and “its” respectively.

(53) In Schedule 6 (notification under Chapter 2: procedure)–

- (a) for “Director” (in each place) there is substituted “OFT”;
- (b) in paragraph 3(1) and (2), for “he” there is substituted “it”;
- (c) in paragraph 5(2)–
- (i) for “he thinks” there is substituted “it thinks”;
  - (ii) for “bringing it” there is substituted “bringing the application”;
  - (iii) for “he is” there is substituted “the OFT is”;
  - (iv) the words “for him” shall cease to have effect;
- (d) in paragraph 5(3), for “him” there is substituted “it”;

- (e) in paragraph 6, for “he” and “his” (in both places) there is substituted “it” and “its” respectively.
- (54) In Schedule 8 (appeals)–
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in paragraph 2(2)(c), for “Director’s exercise of his” there is substituted “OFT’s exercise of its”;
  - (c) in paragraph 3(2)(d) and (e), for “himself” there is substituted “itself”.
- (55) In Schedule 9 (Director’s rules), for “Director” (in each place), “he” (in each place), “Director’s” (in each place) and “him” there is substituted “OFT”, “it”, “OFT’s” and “it” respectively.

*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)–
- (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 “OFT”.
- (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)—
- (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 subparagraphs (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 subparagraph (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 subparagraph (1), have effect as if for subparagraph (ii) there were substituted –
- “(ii) if earlier, the day on which the report of the Commission on the investigation concerned is made or, if the 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.”;
- (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.

*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)–
- (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.”
- (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.
- (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—
- “(ii) 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 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,*”.

*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,*”;  
(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)”.

*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 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.
    - (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
  - (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 –
- “(ii) 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 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)–
- (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.

## SCHEDULE 26

Section 278

## REPEALS AND REVOCATIONS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Registered Designs Act 1949 (c. 88)	In section 11A(1), paragraphs (a) and (b).
Agricultural Marketing Act 1958 (c. 47)	In section 19A(2), the words from the beginning of the subsection to “this section”.
Public Records Act 1958 (c. 51)	In Schedule 1, in Part 2, the entry relating to the Office of the Director General of Fair Trading.
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.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Fair Trading Act 1973 (c. 41) – <i>cont.</i>	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”. 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);

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Telecommunications Act 1984 (c. 12)– <i>cont.</i>	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.
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);



<i>Reference</i>	<i>Extent of repeal or revocation</i>
Insolvency Act 1986 (c. 45) – <i>cont.</i>	<p>in subsection (4), the words “but no certificate for the summary administration of the estate is issued”.</p> <p>Section 298(3).</p> <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”;                      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”;                      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”;                      subsection (7).</p> <p>In section 56C, subsections (7) and (8).</p>

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Electricity Act 1989 (c. 29) – <i>cont.</i>	In Schedule 16, paragraphs 16, 17(2), 24, 25 and 36.
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).

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Railways Act 1993 (c. 43)	In section 4, in subsection (2)(a), the words from “in cases where” to “market”, and subsection (8). 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.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Finance Act 1997 (c. 16)	In Schedule 2, paragraph 6.
Justices of the Peace Act 1997 (c. 25)	Section 65.
Competition Act 1998 (c. 41)	<p>In section 3(1), paragraph (d) and the word “or” before it.</p> <p>Section 46(3)(h).</p> <p>Section 48.</p> <p>Sections 55 and 56.</p> <p>In section 59(1), the definitions of “appeal tribunal” and “the Director”.</p> <p>In section 61(1), the definition of “the Director”.</p> <p>Sections 66 and 67.</p> <p>Schedule 4.</p> <p>In Schedule 5, in paragraph 5(2), the words “for him”.</p> <p>In Schedule 6, in paragraph 5(2), the words “for him”.</p> <p>In Schedule 7—</p> <p>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;</p> <p>paragraph 2(1)(a), (3)(a) and (4);</p> <p>paragraph 4;</p> <p>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”;</p> <p>paragraph 6(5);</p> <p>paragraph 7(4);</p> <p>in paragraph 9, sub-paragraph (2) and in sub-paragraph (3), the words “and the President”.</p> <p>paragraph 10;</p> <p>in paragraph 15(7), paragraph (b) and the word “or” before it;</p> <p>paragraphs 23 to 27.</p> <p>In Schedule 8, paragraphs 1 and 4 to 14.</p> <p>In Schedule 10—</p> <p>paragraph 1;</p> <p>paragraph 2(7) and (10);</p> <p>paragraph 3(6) and (9) to (11);</p> <p>paragraph 4(6) and (9);</p> <p>paragraph 5(7), (9), (10) and (13);</p> <p>paragraph 6(6) and (9);</p> <p>paragraph 7(6) and (9);</p> <p>paragraph 8(6) and (9) to (11);</p> <p>paragraph 9(5);</p> <p>paragraph 10(4);</p> <p>paragraph 12(4) and (6);</p> <p>paragraph 13(8);</p> <p>paragraph 15(4);</p> <p>paragraph 17(6).</p> <p>Schedule 11.</p> <p>In Schedule 12—</p> <p>paragraph 1(4) to (7) and (14);</p> <p>paragraph 3;</p>

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Competition Act 1998 (c. 41) – <i>cont.</i>	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.
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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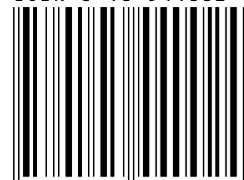
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**CORRECTION**

## **Section 107**

Page 82: In section 107(2)(b) the reference to “section 32” should be to “section 33”.

*September 2003*

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## **ENTERPRISE ACT**

**2002 c. 40**

## **CORRECTIONS**

### **Section 194**

Page 149: The paragraph inserted by section 194(5) into the Criminal Justice and Police Act 2001 should be numbered “73B”, not “73A”.

### **Schedule 25**

Page 401: in paragraph 30(14)(c)(i) of Schedule 25, the words “the Director of Fair Trading” should read “the Director General of Fair Trading”.