



# Fair Trading Act 1973

## 1973 CHAPTER 41

An Act to provide for the appointment of a Director General of Fair Trading and of a Consumer Protection Advisory Committee, and to confer on the Director General and the Committee so appointed, on the Secretary of State, on the Restrictive Practices Court and on certain other courts new functions for the protection of consumers; to make provision, in substitution for the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and the Monopolies and Mergers Act 1965, for the matters dealt with in those Acts and related matters, including restrictive labour practices; to amend the Restrictive Trade Practices Act 1956 and the Restrictive Trade Practices Act 1968, to make provision for extending the said Act of 1956 to agreements relating to services, and to transfer to the Director General of Fair Trading the functions of the Registrar of Restrictive Trading Agreements; to make provision with respect to pyramid selling and similar trading schemes; to make new provision in place of section 30(2) to (4) of the Trade Descriptions Act 1968; and for purposes connected with those matters. [25th July 1973]

BE 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 I

### INTRODUCTORY

#### **1 Director General of Fair Trading**

- (1) The Secretary of State shall appoint an officer to be known as the Director General of Fair Trading (in this Act referred to as " the Director ") for the purpose of performing the functions assigned or transferred to the Director by or under this Act.

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- (2) An appointment of a person to hold office as the Director shall not be for a term exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.
- (3) The Director may at any time resign his office as the Director by notice in writing addressed to the Secretary of State ; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.
- (4) Subject to subsections (2) and (3) of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.
- (5) The Director may appoint such staff as he may think fit, subject to the approval of the Minister for the Civil Service as to numbers and as to terms and conditions of service.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

## **2 General functions of Director**

- (1) Without prejudice to any other functions assigned or transferred to him by or under this Act, it shall be the duty of the Director, so far as appears to him to be practicable from time to time,—
  - (a) to keep under review the carrying on of commercial activities in the United Kingdom which relate to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or which relate to services supplied for consumers in the United Kingdom, and to collect information with respect to such activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, practices which may adversely affect the economic interests of consumers in the United Kingdom, and
  - (b) to receive and collate evidence becoming available to him with respect to such activities as are mentioned in the preceding paragraph and which appears to him to be evidence of practices which may adversely affect the interests (whether they are economic interests or interests with respect to health, safety or other matters) of consumers in the United Kingdom.
- (2) It shall also be the duty of the Director, so far as appears to him to be practicable from time to time, to keep under review the carrying on of commercial activities in the United Kingdom, and to collect information with respect to those activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, monopoly situations or uncompetitive practices.
- (3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so,—
  - (a) to give information and assistance to the Secretary of State with respect to any of the matters in respect of which the Director has any duties under subsections (1) and (2) of this section, or
  - (b) subject to the provisions of Part II of this Act in relation to recommendations under that Part of this Act, to make recommendations to the Secretary of State as to any action which in the opinion of the Director it would be expedient for the Secretary of State or any other Minister to take in relation to any of the matters in respect of which the Director has any such duties.

- (4) It shall also be the duty of the Director to have regard to evidence becoming available to him with respect to any course of conduct on the part of a person carrying on a business which appears to be conduct detrimental to the interests of consumers in the United Kingdom and (in accordance with the provisions of Part III of this Act) to be regarded as unfair to them, with a view to considering what action (if any) he should take under Part III of this Act.
- (5) It shall be the duty of the Director to have regard to the needs of regional development and to the desirability of dispersing administrative offices from London in making decisions on the location of offices for his staff.

### **3 Consumer Protection Advisory Committee**

- (1) There shall be established an advisory committee to be called the Consumer Protection Advisory Committee (in this Act referred to as " the Advisory Committee ") for the purpose of performing the functions assigned to that Committee by Part II of this Act.
- (2) Subject to subsection (6) of this section, the Advisory Committee shall consist of not less than ten and not more than fifteen members, who shall be appointed by the Secretary of State.
- (3) The Secretary of State may appoint persons to the Advisory Committee either as full-time members or as part-time members.
- (4) Of the members of the Advisory Committee, the Secretary of State shall appoint one to be chairman and one to be deputy chairman of the Advisory Committee.
- (5) In appointing persons to be members of the Advisory Committee, the Secretary of State shall have regard to the need for securing that the Advisory Committee will include—
  - (a) one or more persons appearing to him to be qualified to advise on practices relating to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or relating to services supplied for consumers in the United Kingdom, by virtue of their knowledge of or experience in the supply (whether to consumers or not) of such goods or by virtue of their knowledge of or experience in the supply of such services;
  - (b) one or more persons appearing to him to be qualified to advise on such practices as are mentioned in the preceding paragraph by virtue of their knowledge of or experience in the enforcement of the Weights and Measures Act 1963 or the Trade Descriptions Act 1968 or other similar enactments ; and
  - (c) one or more persons appearing to him to be qualified to advise on such practices by virtue of their knowledge of or experience in organisations established, or activities carried on, for the protection of consumers.
- (6) The Secretary of State may by order made by statutory instrument increase the maximum number of members of the Advisory Committee to such number as he may think fit.
- (7) The provisions of Schedule 2 to this Act shall have effect with respect to the Advisory Committee.

#### **4 The Monopolies and Mergers Commission**

- (1) The Commission established under section 1 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 by the name of the Monopolies and Restrictive Practices Commission, and subsequently renamed the Monopolies and Mergers Commission, shall as from the commencement of this Act be known as the Monopolies and Mergers Commission, and shall continue to exist by that name for the purpose of performing the functions assigned to that Commission (in this Act referred to as " the Commission ") by or under this Act.
- (2) There shall be not less than ten and (subject to the next following subsection) not more than twenty-five regular members of the Commission, who shall be appointed by the Secretary of State.
- (3) The Secretary of State may by order made by statutory instrument increase the maximum number of regular members of the Commission to such number as he may think fit.
- (4) The provisions of Schedule 3 to this Act shall have effect with respect to the Commission.

#### **5 Principal functions of Commission**

- (1) Without prejudice to any other functions assigned to the Commission by or under this Act, it shall be the duty of the Commission, subject to and in accordance with the following provisions of this Act, to investigate and report on any question which may be referred to the Commission under this Act—
  - (a) with respect to the existence, or possible existence, of a monopoly situation, or
  - (b) with respect to a transfer of a newspaper or of newspaper assets (within the meaning of Part V of this Act), or
  - (c) with respect to the creation, or possible creation, of a merger situation qualifying for investigation (within the meaning of Part V of this Act).
- (2) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them under this Act, to give to the Commission—
  - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request, and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (3) In this Act " monopoly reference " means any reference to the Commission under this Act which falls within paragraph (a) of subsection (1) of this section; "merger reference" (subject to section 63 of this Act) means any reference to the Commission under this Act which falls within paragraph (b) or paragraph (c) of that subsection; and " monopoly situation " (except in sections 6 to 8 of this Act) means circumstances in which, in accordance with the following provisions of this Part of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to any matters specified in section 6(1), section 7(1) or section 8 of this Act.

## **6 Monopoly situation in relation to supply of goods**

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of goods of any description in the following cases, that is to say, if—
- (a) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by one and the same person, or are supplied to one and the same person, or
  - (b) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group of interconnected bodies corporate, or are supplied to members of one and the same group of interconnected bodies corporate, or
  - (c) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or are supplied to members of one and the same group consisting of two or more such persons, or
  - (d) one or more agreements are in operation, the result or collective result of which is that goods of that description are not supplied in the United Kingdom at all.
- (2) The two or more persons referred to in subsection (1)(c) of this section, in relation to goods of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the production or supply of goods of that description, whether or not they themselves are affected by the competition and whether the competition is between persons interested as producers or suppliers or between persons interested as customers of producers or suppliers.

## **7 Monopoly situation in relation to supply of services**

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of services of any description in the following cases, that is to say, if—
- (a) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by one and the same person, or supply for one and the same person, or
  - (b) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group of interconnected bodies corporate, or supply for members of one and the same group of interconnected bodies corporate, or
  - (c) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or supply for members of one and the same group consisting of two or more such persons, or
  - (d) one or more agreements are in operation, the result or collective result of which is that services of that description are not supplied in the United Kingdom at all.
- (2) The two or more persons referred to in subsection (1)(c) of this section, in relation to services of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by

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agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of services of that description, whether or not they themselves are affected by the competition, and whether the competition is between persons interested as persons by whom, or as persons for whom, services are supplied.

- (3) In the application of this section for the purposes of a monopoly reference, the Commission, or the person or persons making the reference, may, to such extent as the Commission, or that person or those persons, think appropriate in the circumstances, treat services as supplied in the United Kingdom if the person supplying the services—
- (a) has a place of business in the United Kingdom, or
  - (b) controls the relevant activities from the United Kingdom, or
  - (c) being a body corporate, is incorporated under the law of Great Britain or of Northern Ireland,

and may do so whether or not those services would otherwise be regarded as supplied in the United Kingdom.

## **8 Monopoly situation in relation to exports**

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to exports of goods of any description from the United Kingdom in the following cases, that is to say, if—
- (a) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by one and the same person, or
  - (b) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by members of one and the same group of interconnected bodies corporate;

and in those cases a monopoly situation shall for the purposes of this Act be taken to exist both in relation to exports of goods of that description from the United Kingdom generally and in relation to exports of goods of that description from the United Kingdom to each market taken separately.

- (2) In relation to exports of goods of any description from the United Kingdom generally, a monopoly situation shall for the purposes of this Act be taken to exist if—
- (a) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the export of goods of that description from the United Kingdom, and
  - (b) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.
- (3) In relation to exports of goods of any description from the United Kingdom to any particular market, a monopoly situation shall for the purposes of this Act be taken to exist if—
- (a) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the supply of goods of that description (whether from the United Kingdom or not) to that market, and
  - (b) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.

## **9 Monopoly situation limited to part of United Kingdom**

- (1) For the purposes of a monopoly reference, other than a reference relating to exports of goods from the United Kingdom, the person or persons making the reference may, if it appears to him or them to be appropriate in the circumstances to do so, determine that consideration shall be limited to a part of the United Kingdom.
- (2) Where such a determination is made, then for the purposes of that monopoly reference the provisions of sections 6 and 7 of this Act, or such of those provisions as are applicable for those purposes, shall have effect as if, wherever those provisions refer to the United Kingdom, they referred to that part of the United Kingdom to which, in accordance with that determination, consideration is to be limited.
- (3) The preceding provisions of this section shall have effect subject to subsection (4) of section 50 of this Act in cases to which that subsection applies.

## **10 Supplementary provisions relating to ss.6 to 9**

- (1) In the application of any of the provisions of sections 6 to 9 of this Act for the purposes of a monopoly reference, those provisions shall have effect subject to the following provisions of this section.
- (2) No account shall for those purposes be taken of any provisions of an agreement in so far as they are provisions by virtue of which it is an agreement to which Part I of the Act of 1956 applies.
- (3) In relation to goods or services of any description which are the subject of different forms of supply—
  - (a) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 6 or in section 8(3) of this Act to the supply of goods, or
  - (b) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 7 of this Act to the supply of services,shall for those purposes be construed in whichever of the following ways the Commission, or the person or persons making the monopoly reference, think appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.
- (4) For the purposes of subsection (3) of this section the Commission, or the person or persons making the monopoly reference in question, may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Commission, or the person or persons making the reference, ought for the purposes of that subsection to be treated as a material difference.
- (5) For the purposes of a monopoly reference made by the Director, subsections (3) and (4) of this section shall have effect subject to section 50(3) and (4) of this Act.
- (6) In determining, for the purposes of a monopoly reference, whether the proportion of one-quarter mentioned in any provision of section 6, section 7 or section 8 of this Act is fulfilled with respect to goods or services of any description, the Commission, or the person or persons making the reference, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some

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other criterion, of whatever nature) or such combination of criteria as may appear to them or him to be most suitable in all the circumstances.

- (7) The criteria for determining when goods or services can be treated, for the purposes of a monopoly reference, as goods or services of a separate description shall be such as the person or persons making the reference may think most suitable in the circumstances.
- (8) In construing the provisions of section 7(3) and section 9 of this Act and the provisions of subsections (1) to (7) of this section, the purposes of a monopoly reference shall be taken to include the purpose of enabling the Director, or the Secretary of State or any other Minister, to determine in any particular circumstances—
- (a) whether a monopoly reference could be made under Part IV of this Act, and
  - (b) if so, whether in those circumstances such a reference could be made by the Director,

and references in those provisions to the person or persons making a monopoly reference shall be construed accordingly.

## **11 Meaning of "complex monopoly situation"**

- (1) In this Act " complex monopoly situation " means circumstances in which, in accordance with the preceding provisions of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, by reason that the condition specified in paragraph (c) or in paragraph (d) of section 6(1) or of section 7(1) of this Act is fulfilled, or that the conditions specified in subsection (2) or in subsection (3) of section 8 of this Act are fulfilled.
- (2) Any reference in the preceding subsection to paragraph (c) or paragraph (d) of section 6(1) or of section 7(1) of this Act shall be construed as including a reference to that paragraph as modified by section 9(2) of this Act.

## **12 Powers of Secretary of State in relation to functions of Director**

- (1) The Secretary of State may give general directions indicating considerations to which the Director should have particular regard in determining the order of priority in which—
- (a) matters are to be brought under review in the performance of his duty under section 2(1) of this Act, or
  - (b) classes of goods or services are to be brought under review by him for the purpose of considering whether a monopoly situation exists or may exist in relation to them.
- (2) The Secretary of State may also give general directions indicating—
- (a) considerations to which, in cases where it appears to the Director that a practice may adversely affect the interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a recommendation to the Secretary of State under section 2(3)(b) of this Act, or
  - (b) considerations to which, in cases where it appears to the Director that a consumer trade practice may adversely affect the economic interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a reference to the Advisory Committee under Part II of this Act, or



- (c) considerations to which, in cases where it appears to the Director that a monopoly situation exists or may exist, he should have particular regard in determining whether to make a monopoly reference to the Commission under Part IV of this Act.
- (3) The Secretary of State, on giving any directions under this section, shall arrange for those directions to be published in such manner as the Secretary of State thinks most suitable in the circumstances.

## PART II

### REFERENCES TO CONSUMER PROTECTION ADVISORY COMMITTEE

#### *General provisions*

#### **13 Meaning of "consumer trade practice"**

In this Act " consumer trade practice means any practice which is for the time being carried on in connection with the supply of goods (whether by way of sale or otherwise) to consumers or in connection with the supply of services for consumers and which relates—

- (a) to the terms or conditions (whether as to price or otherwise) on or subject to which goods or services are or are sought to be supplied, or
- (b) to the manner in which those terms or conditions are communicated to persons to whom goods are or are sought to be supplied or for whom services are or are sought to be supplied, or
- (c) to promotion (by advertising, labelling or marking of goods, canvassing or otherwise) of the supply of goods or of the supply of services, or
- (d) to methods of salesmanship employed in dealing with consumers, or
- (e) to the way in which goods are packed or otherwise got up for the purpose of being supplied, or
- (f) to methods of demanding or securing payment for goods or services supplied.

#### **14 General provisions as to references to Advisory Committee**

- (1) Subject to sections 15 and 16 of this Act, the Secretary of State or any other Minister or the Director may refer to the Advisory Committee the question whether a consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom.
- (2) The Secretary of State or any other Minister by whom a reference is made under this section shall transmit a copy of the reference to the Director.
- (3) On any reference made to the Advisory Committee under this section the Advisory Committee shall consider the question so referred to them and shall prepare a report on that question and (except as otherwise provided by section 21(3) of this Act) submit that report to the person by whom the reference was made.
- (4) Subject to the provisions of section 133 of this Act, it shall be the duty of the Director, where he is requested by the Advisory Committee to do so for the purpose of assisting

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the Committee in carrying out an investigation on a reference made to them under this section, to give to the Committee—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and
  - (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to any such matters.
- (5) The Advisory Committee shall transmit to the Secretary of State a copy of every report which is made by them under this section to a person other than the Secretary of State, and shall transmit to the Director a copy of every report which is made by them under this section to a person other than the Director.

### **15 Exclusion from s.14 in respect of certain services**

No reference under section 14 of this Act shall be made to the Advisory Committee by the Secretary of State or by any other Minister or by the Director if it appears to him—

- (a) that the consumer trade practice in question is carried on in connection only with the supply of services of a description specified in Schedule 4 to this Act, and
- (b) that a monopoly situation exists or may exist in relation to the supply of services of that description.

### **16 Restriction on references under s.14 in respect of certain goods and services**

(1) No reference under section 14 of this Act shall be made to the Advisory Committee by the Director except with the consent of the appropriate Minister, if it appears to the Director that the consumer trade practice in question—

- (a) is carried on in connection only with the supply, by a body corporate to which this section applies, of goods or services of a description specified in Part I of Schedule 5 to this Act, or
- (b) is carried on in connection only with the supply by such a body corporate of goods or services of a description specified in the first column of Part II of that Schedule, in so far as that supply falls within the entry relating to it in the second column of that Part of that Schedule.

(2) This section applies to any body corporate which fulfils the following conditions, that is to say—

- (a) that the affairs of the body corporate are managed by its members, and
- (b) that by virtue of an enactment those members are appointed by a Minister;

and in this section " Minister " includes a Minister of the Government of Northern Ireland, and "the appropriate Minister ", in relation to a body corporate, means the Minister by whom members of that body corporate are appointed.

(3) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 5 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.

## **17 Reference to Advisory Committee proposing recommendation to Secretary of State to make an order**

- (1) This section applies to any reference made to the Advisory Committee by the Director under section 14 of this Act which includes proposals in accordance with the following provisions of this section.
- (2) Where it appears to the Director that a consumer trade practice has the effect, or is likely to have the effect,—
  - (a) of misleading consumers as to, or withholding from them adequate information as to, or an adequate record of, their rights and obligations under relevant consumer transactions, or
  - (b) of otherwise misleading or confusing consumers with respect to any matter in connection with relevant consumer transactions, or
  - (c) of subjecting consumers to undue pressure to enter into relevant consumer transactions, or
  - (d) of causing the terms or conditions, on or subject to which consumers enter into relevant consumer transactions, to be so adverse to them as to be inequitable,any reference made by the Director under section 14 of this Act with respect to that consumer trade practice may, if the Director thinks fit, include proposals for recommending to the Secretary of State that he should exercise his powers under the following provisions of this Part of this Act with respect to that consumer trade practice.
- (3) A reference to which this section applies shall state which of the effects specified in subsection (2) of this section it appears to the Director that the consumer trade practice in question has or is likely to have.
- (4) Where the Director makes a reference to which this section applies, he shall arrange for it to be published in full in the London, Edinburgh and Belfast Gazettes.
- (5) In this Part of this Act " relevant consumer transaction in relation to a consumer trade practice, means any transaction to which a person is, or may be invited to become, a party in his capacity as a consumer in relation to that practice.

## **18 No such recommendation to be made except in pursuance of reference to which s.17 applies**

The Director shall not make any recommendation to the Secretary of State to exercise his powers under the following provisions of this Part of this Act except by way of making a reference to the Advisory Committee to which section 17 of this Act applies.

## **19 Scope of recommendation proposed in reference to which s.17 applies**

- (1) In formulating any proposals which, in accordance with the provisions of section 17 of this Act, are included in a reference to which that section applies, the Director shall have regard—
  - (a) to the particular respects in which it appears to him that the consumer trade practice specified in the reference may adversely affect the economic interests of consumers in the United Kingdom, and
  - (b) to the class of relevant consumer transactions, or the classes (whether being some or all classes) of such transactions, in relation to which it appears to him that the practice may so affect those consumers;

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and the proposed recommendation shall be for an order making, in relation to relevant consumer transactions of that class or of those classes, as the case may be, such provision specified in the proposals as the Director may consider requisite for the purpose of preventing the continuance of that practice, or causing it to be modified, in so far as it may so affect those consumers in those respects.

- (2) Without prejudice to the generality of the preceding subsection, for the purpose mentioned in that subsection any such proposals may in particular recommend the imposition by such an order of prohibitions or requirements of any description specified in Schedule 6 to this Act.
- (3) In that Schedule, in its application to any such proposals, " the specified consumer trade practice " means the consumer trade practice specified in the reference in which the proposals are made, " specified consumer transactions " means transactions which are relevant consumer transactions in relation to that consumer trade practice and are of a description specified in the proposals, and " specified " (elsewhere than in those expressions) means specified in the proposals.

## **20 Time-limit and quorum for report on reference to which s.17 applies**

- (1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall not have effect, and no action shall be taken in relation to it under the following provisions of this Part of this Act, unless the report is made before the end of the period of three months beginning with the date of the reference or of such further period or periods (if any) as may be allowed by the Secretary of State.
- (2) The Secretary of State shall not allow any further period for such a report except after consulting the Advisory Committee and considering any representations made by them with respect to the proposal to allow a further period.
- (3) No such further period shall be longer than three months ; but (subject to subsection (2) of this section) two or more further periods may be allowed in respect of the same reference.
- (4) The quorum necessary for a meeting of the Advisory Committee held for the final settling of a report of the Committee on a reference to which section 17 of this Act applies shall be not less than two-thirds of the members of the Committee.

## **21 Report of Advisory Committee on reference to which s.17 applies**

- (1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall state the conclusions of the Committee on the questions—
  - (a) whether the consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom, and
  - (b) if so, whether it does so by reason, or partly by reason, that it has or is likely to have such one or more of the effects specified in section 17(2) of this Act as are specified in the report.
- (2) If, in their conclusions set out in such a report, the Advisory Committee find that the consumer trade practice specified in the reference does adversely affect the economic interests of consumers in the United Kingdom, and does so wholly or partly for the reason mentioned in subsection (1)(b) of this section, the report shall state whether the Committee—
  - (a) agree with the proposals set out in the reference, or

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- (b) would agree with those proposals if they were modified in a manner specified in the report, or
  - (c) disagree with the proposals and do not desire to suggest any such modifications.
- (3) Every report of the Advisory Committee on a reference to which section 17 of this Act applies shall be made to the Secretary of State, and shall set out in full the reference on which it is made.

*Order in pursuance of report of Advisory Committee*

**22 Order of Secretary of State in pursuance of report on reference to which s.17 applies**

- (1) The provisions of this section shall have effect where a report of the Advisory Committee on a reference to which section 17 of this Act applies has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the report states that the Committee—
- (a) agree with the proposals set out in the reference, or
  - (b) would agree with those proposals if they were modified in a manner specified in the report.
- (2) In the circumstances mentioned in the preceding subsection, the Secretary of State may, if he thinks fit, by an order made by statutory instrument make such provision as—
- (a) in a case falling within paragraph (a) of the preceding subsection, is in his opinion appropriate for giving effect to the proposals set out in the reference, or
  - (b) in a case falling within paragraph (b) of that subsection, is in his opinion appropriate for giving effect either to the proposals as set out in the reference or to those proposals as modified in the manner specified in the report, as the Secretary of State may in his discretion determine.
- (3) Any such order may contain such supplementary or incidental provisions as the Secretary of State may consider appropriate in the circumstances; and (without prejudice to the generality of this subsection) any such order may restrict the prosecution of offences under the next following section in respect of contraventions of the order where those contraventions also constitute offences under another enactment
- (4) No such order, and no order varying or revoking any such order, shall be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

**23 Penalties for contravention of order under s.22**

Subject to the following provisions of this Part of this Act, any person who contravenes a prohibition imposed by an order under section 22 of this Act, or who does not comply with a requirement imposed by such an order which applies to him, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £400;

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- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

## **24 Offences due to default of other person**

Where the commission by any person of an offence under section 23 of this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

## **25 Defences in proceedings under s.23**

- (1) In any proceedings for an offence under section 23 of this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—
  - (a) that the commission of the offence was due to a mistake, or to reliance on information supplied to him, or to the act or default of another person, an accident or some other cause beyond his control, and
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (2) If in any case the defence provided by the preceding subsection involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (3) In proceedings for an offence under section 23 of this Act committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under section 23 of this Act.

## **26 Limitation of effect of orders under s.22**

A contract for the supply of goods or services shall not be void or unenforceable by reason only of a contravention of an order made under section 22 of this Act; and, subject to the provisions of section 33 of the Interpretation Act 1889 (which relates to offences under two or more laws), the provisions of this Part of this Act shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of such an order, or
- (b) affecting any restriction imposed by or under any other enactment, whether public, local or private, or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part of this Act.

### *Enforcement of orders*

#### **27 Enforcing authorities**

- (1) It shall be the duty of every local weights and measures authority to enforce within their area the provisions of any order made under section 22 of this Act; and section 37 of the Weights and Measures Act 1963 (power of local authorities to combine) shall apply with respect to the functions of such authorities under this Part of this Act as it applies with respect to their functions under that Act.
- (2) Nothing in subsection (1) shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

#### **28 Power to make test purchases**

A local weights and measures authority may make, or may authorise any of their officers to make on their behalf, such purchases of goods, and may authorise any of their officers to obtain such services, as may be expedient for the purpose of determining whether or not the provisions of any order made under section 22 of this Act are being complied with.

#### **29 Power to enter premises and inspect and seize goods and documents**

- (1) A duly authorised officer of a local weights and measures authority, or a person duly authorised in writing by the Secretary of State, may at all reasonable hours, and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 23 of this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
  - (b) if he has reasonable cause to suspect that an offence under that section has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document;
  - (c) if he has reasonable cause to believe that such an offence has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
  - (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for such an offence ;
  - (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of an order made under section 22 of this Act are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.
- (2) A person seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the

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machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.

- (3) If a justice of the peace, on sworn information in writing,—
- (a) is satisfied that there is reasonable ground to believe either—
    - (i) that any goods, books or documents which a person has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 23 of this Act, or
    - (ii) that any offence under section 23 has been, is being or is about to be committed on any premises, and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent, and it might defeat the object of the entry to await his return,

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any such officer or other person as is mentioned in subsection (1) of this section to enter the premises, if need be by force.

In the application of this subsection to Scotland, " justice of the peace" shall be construed as including a sheriff and a magistrate.

- (4) A person entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) of this section he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (5) Nothing in this section shall be taken to compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

### **30 Offences in connection with exercise of powers under s.29**

- (1) Subject to subsection (6) of this section, any person who—
- (a) wilfully obstructs any such officer or person as is mentioned in subsection (1) of section 29 of this Act acting in the exercise of any powers conferred on him by or under that section, or
  - (b) wilfully fails to comply with any requirement properly made to him by such an officer or person under that section, or
  - (c) without reasonable cause fails to give to such an officer or person so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Part of this Act,
- shall be guilty of an offence.



- (2) If any person, in giving any such information as is mentioned in subsection (1)(c) of this section, makes any statement which he knows to be false, he shall be guilty of an offence.
- (3) If any person discloses to any other person—
  - (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 29 of this Act, or
  - (b) any information obtained by him under that section or by virtue of subsection (1) of this section,he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.
- (4) If any person who is neither a duly authorised officer of a weights and measures authority nor a person duly authorised in that behalf by the Secretary of State purports to act as such under section 29 of this Act or under this section, he shall be guilty of an offence.
- (5) Any person guilty of an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding £50; and any person guilty of an offence under subsection (2), subsection (3) or subsection (4) of this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (6) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

### **31 Notice of test**

Where any goods seized or purchased by a person in pursuance of this Part of this Act are submitted to a test, then—

- (a) if the goods were seized, he shall inform any such person as is mentioned in section 29(2) of this Act of the result of the test;
- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under section 23 of this Act, he shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in relation to such goods in section 29(2) of this Act, of the result of the test;

and where, as a result of the test, proceedings for an offence under section 23 of this Act are instituted against any person, he shall allow that person to have the goods tested on his behalf if it is reasonably practicable to do so.

### **32 Compensation for loss in respect of goods seized under s.29**

- (1) Where in the exercise of his powers under section 29 of this Act a person seizes and detains any goods, and their owner suffers loss by reason of their being seized or by reason that the goods, during the detention, are lost or damaged or deteriorate, unless the owner is convicted of an offence under section 23 of this Act committed in relation to the goods, the appropriate authority shall be liable to compensate him for the loss so suffered.

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- (2) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.
- (3) In this section " the appropriate authority "—
  - (a) in relation to goods seized by an officer of a local weights and measures authority, means that authority, and
  - (b) in any other case, means the Secretary of State.

### **33 Application of Part II to Northern Ireland**

- (1) It shall be the duty of the Ministry of Commerce for Northern Ireland to enforce in Northern Ireland the provisions of any order under section 22 of this Act.
- (2) In the application of this Part of this Act to Northern Ireland—
  - (a) section 27 shall not apply;
  - (b) in sections 28 and 29, any reference to a local weights and measures authority shall be construed as a reference to the Ministry of Commerce for Northern Ireland, and the provisions of sections 30 to 32 shall be construed accordingly;
  - (c) in section 29(3), any reference to a justice of the peace shall be construed as a reference to a resident magistrate; and
  - (d) the provisions of the Arbitration Act (Northern Ireland) 1937, except the provisions set out in Schedule 3 thereto, shall apply to an arbitration under section 32 of this Act as if the arbitration were pursuant to an arbitration agreement (as defined in section 30(1) of that Act).

## **PART III**

### ADDITIONAL FUNCTIONS OF DIRECTOR FOR PROTECTION OF CONSUMERS

### **34 Action by Director with respect to course of conduct detrimental to interests of consumers**

- (1) Where it appears to the Director that the person carrying on a business has in the course of that business persisted in a course of conduct which—
  - (a) is detrimental to the interests of consumers in the United Kingdom, whether those interests are economic interests or interests in respect of health, safety or other matters, and
  - (b) in accordance with the following provisions of this section is to be regarded as unfair to consumers,

the Director shall use his best endeavours, by communication with that person or otherwise, to obtain from him a satisfactory written assurance that he will refrain from continuing that course of conduct and from carrying on any similar course of conduct in the course of that business.
- (2) For the purposes of subsection (1)(b) of this section a course of conduct shall be regarded as unfair to consumers if it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation

to consumers as such or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.

- (3) A course of conduct on the part of the person carrying on a business shall also be regarded for those purposes as unfair to consumers if it consists of things done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not.
- (4) For the purpose of determining whether it appears to him that a person has persisted in such a course of conduct as is mentioned in subsection (1) of this section, the Director shall have regard to either or both of the following, that is to say—
  - (a) complaints received by him, whether from consumers or from other persons;
  - (b) any other information collected by or furnished to him, whether by virtue of this Act or otherwise.

### **35 Proceedings before Restrictive Practices Court**

If, in the circumstances specified in subsection (1) of section 34 of this Act,—

- (a) the Director is unable to obtain from the person in question such an assurance as is mentioned in that subsection, or
- (b) that person has given such an assurance and it appears to the Director that he has failed to observe it,

the Director may bring proceedings against him before the Restrictive Practices Court.

### **36 Evidence in proceedings under s.35**

- (1) For the purposes of section 11 of the Civil Evidence Act 1968, section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 7 of the Civil Evidence Act (Northern Ireland) 1971 (each of which relates to convictions as evidence in civil proceedings), proceedings under section 35 of this Act shall (without prejudice to the generality of the relevant definition) be taken to be civil proceedings within the meaning of the Act in question.
- (2) Where in any proceedings under section 35 of this Act the Director alleges such a breach of contract or breach of duty as is mentioned in section 34(3) of this Act, a judgment of any court given in civil proceedings, which includes a finding that the breach of contract or breach of duty in question was committed,—
  - (a) shall be admissible in evidence for the purpose of proving the breach of contract or breach of duty, and
  - (b) shall, unless the contrary is proved, be taken to be sufficient evidence that the breach of contract or breach of duty was committed.
- (3) For the purposes of subsection (2) of this section no account shall be taken of a judgment given in any civil proceedings if it has subsequently been reversed on appeal, or has been varied on appeal so as to negative the finding referred to in that subsection.
- (4) In subsection (1) of this section " the relevant definition " means section 18(1) of the Civil Evidence Act 1968, section 17(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 14(1) of the Civil Evidence Act (Northern Ireland) 1971, as the case may be.

### **37 Order of, or undertaking given to, Court in proceedings under s.35**

(1) Where in any proceedings before the Restrictive Practices Court under section 35 of this Act—

- (a) the Court finds that the person against whom the proceedings are brought (in this section referred to as " the respondent") has in the course of a business carried on by him persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and
- (b) the respondent does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and
- (c) it appears to the Court that, unless an order is made against the respondent under this section, he is likely to continue that course of conduct or to carry on a similar course of conduct,

the Court may make an order against the respondent under this section.

(2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the respondent—

- (a) to refrain from continuing that course of conduct, and
- (b) to refrain from carrying on any similar course of conduct in the course of his business.

(3) Where in any proceedings under section 35 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the respondent offers to give to the Court an undertaking either—

- (a) to refrain as mentioned in paragraphs (a) and (b) of subsection (2) of this section, or
- (b) to take particular steps which, in the opinion of the Court, would suffice to prevent a continuance of the course of conduct to which the complaint relates and to prevent the carrying on by the respondent of any similar course of conduct in the course of his business,

the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

### **38 Provisions as to persons consenting to or conniving at courses of conduct detrimental to interests of consumers**

(1) The provisions of this section shall have effect where it appears to the Director—

- (a) that a body corporate has in the course of a business carried on by that body persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and
- (b) that the course of conduct in question has been so persisted in with the consent or connivance of a person (in this and the next following section referred to as " the accessory ") who at a material time fulfilled the relevant conditions in relation to that body.

(2) For the purposes of this section a person shall be taken to fulfil the relevant conditions in relation to a body corporate at any time if that person either—

- (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity, or

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- (b) whether being an individual or a body of persons, corporate or unincorporate, has at that time a controlling interest in that body corporate.
- (3) If, in the circumstances specified in subsection (1) of this section,—
  - (a) the Director has used his best endeavours to obtain from the accessory such an assurance as is mentioned in the next following subsection and has been unable to obtain such an assurance from him, or
  - (b) the accessory has given such an assurance to the Director and it appears to the Director that he has failed to observe it,the Director may bring proceedings against the accessory before the Restrictive Practices Court.
- (4) The assurance referred to in subsection (3) of this section is a satisfactory written assurance given by the accessory that he will refrain—
  - (a) from continuing to consent to or connive at the course of conduct in question;
  - (b) from carrying on any similar course of conduct in the course of any business which may at any time be carried on by him ; and
  - (c) from consenting to or conniving at the carrying on of any such course of conduct by any other body corporate in relation to which, at any time when that course of conduct is carried on, he fulfils the relevant conditions.
- (5) Proceedings may be brought against the accessory under this section whether or not any proceedings are brought under section 35 of this Act against the body corporate referred to in subsection (1) of this section.
- (6) Section 36 of this Act shall have effect in relation to proceedings under this section as it has effect in relation to proceedings under section 35 of this Act.
- (7) For the purposes of this section a person (whether being an individual or a body of persons, corporate or unincorporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

### **39 Order of, or undertaking given to, Court in proceedings under s.38**

- (1) Where in any proceedings brought against the accessory before the Restrictive Practices Court under section 38 of this Act—
  - (a) the Court finds that the conditions specified in paragraphs (a) and (b) of subsection (4) of that section are fulfilled in the case of the accessory, and
  - (b) the accessory does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and
  - (c) it appears to the Court that, unless an order is made against the accessory under this section, it is likely that he will not refrain from acting in one or more of the ways mentioned in paragraphs (a) to (c) of subsection (4) of that section,the Court may make an order against the accessory under this section.
- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the accessory, in relation to the course of conduct

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so indicated, to refrain from acting in any of the ways mentioned in paragraphs (a) to (c) of subsection (4) of section 38 of this Act.

- (3) Where in any proceedings under section 38 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the accessory offers to give to the Court an undertaking either—
- (a) to refrain from acting in any of the ways mentioned in paragraphs (a) to (c) of subsection (4) of that section, or
  - (b) to take particular steps which, in the opinion of the Court, would suffice to prevent him from acting in any of those ways,
- the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

#### **40 Provisions as to interconnected bodies corporate**

- (1) This section applies to any order made under section 37 or section 39 of this Act.
- (2) Where an order to which this section applies is made against a body corporate which is a member of a group of interconnected bodies corporate, the Restrictive Practices Court, on making the order, may direct that it shall be binding upon all members of the group as if each of them were the body corporate against which the order is made.
- (3) Where an order to which this section applies has been made against a body corporate, and at a time when that order is in force—
- (a) the body corporate becomes a member of a group of interconnected bodies corporate, or
  - (b) a group of interconnected bodies corporate of which it is a member is increased by the addition of one or more further members,
- the Restrictive Practices Court, on the application of the Director, may direct that the order shall thereafter be binding upon each member of the group as if it were the body corporate against which the order was made.
- (4) The power conferred by subsection (3) of this section shall be exercisable—
- (a) whether, at the time when the original order was made, the body corporate against which it was made was a member of a group of interconnected bodies corporate or not, and
  - (b) if it was such a member, whether a direction under subsection (2) of this section was given or not.

#### **41 Concurrent jurisdiction of other courts in certain cases**

- (1) In any case where—
- (a) the Director could bring proceedings against a person before the Restrictive Practices Court under section 35 or section 38 of this Act, and
  - (b) it appears to the Director that the conditions specified in the next following subsection are fulfilled,
- the Director may, if he thinks fit, bring those proceedings in an appropriate alternative court instead of bringing them before the Restrictive Practices Court; and, in relation to any proceedings brought by virtue of this section, the appropriate alternative court in which they are brought shall have the like jurisdiction as the Restrictive Practices Court would have had if they had been brought in that Court.

- (2) The conditions referred to in the preceding subsection are—
- (a) that neither the person against whom the proceedings are to be brought nor the person against whom any associated proceedings have been or are intended to be brought is a body corporate having a share capital, paid up or credited as paid up, of an amount exceeding £10,000, and
  - (b) that neither those proceedings nor any associated proceedings involve or are likely to involve the determination of a question (whether of law or of fact) of such general application as to justify its being reserved for determination by the Restrictive Practices Court.
- (3) For the purposes of this section, the following shall be appropriate alternative courts in relation to proceedings in respect of a course of conduct maintained in the course of a business, that is to say, the county court for any district (or, in Northern Ireland, any division) in which, or, in Scotland, any sheriff court within whose jurisdiction, that business is carried on.
- (4) In relation to any proceedings brought in an appropriate alternative court by virtue of this section, or to any order made in any such proceedings, any reference in section 37, in section 39 or section 40 of this Act to the Restrictive Practices Court shall be construed as a reference to the appropriate alternative court in which the proceedings are brought.
- (5) In this section " associated proceedings "—
- (a) in relation to proceedings under section 35 of this Act, means proceedings under section 38 of this Act against a person as being a person consenting to or conniving at the course of conduct in question, and
  - (b) in relation to proceedings under section 38 of this Act, means proceedings under section 35 of this Act against a person as being the person by whom the course of conduct in question has been maintained.

#### **42 Appeals from decisions or orders of courts under Part III**

- (1) Notwithstanding anything in any other enactment, an appeal, whether on a question of fact or on a question of law, shall lie from any decision or order of any court in proceedings under Part III of this Act.
- (2) Any such appeal shall lie—
- (a) in the case of proceedings in England and Wales, to the Court of Appeal;
  - (b) in the case of proceedings in Scotland, to the Court of Session;
  - (c) in the case of proceedings in Northern Ireland, to the Court of Appeal in Northern Ireland.

#### **43 Legal aid in proceedings under Part III in Restrictive Practices Court**

- (1) The paragraph set out in the next following subsection shall be inserted—
- (a) as paragraph 5, at the end of Part I of Schedule 1 to the Legal Aid and Advice Act 1949 ;
  - (b) as paragraph 4, at the end of Part I of Schedule 1 to the Legal Aid (Scotland) Act 1967; and
  - (c) as paragraph 6, at the end of Part I of Schedule 1 to the Legal Aid and Advice Act (Northern Ireland) 1965.

(2) The paragraph referred to in subsection (1) of this section is as follows:—

“Proceedings in the Restrictive Practices Court under Part III of the Fair Trading Act 1973, and any proceedings in that Court in consequence of an order made, or undertaking given to the Court, under that Part of that Act”.

## PART IV

### FUNCTIONS OF DIRECTOR AND COMMISSION IN RELATION TO MONOPOLY SITUATIONS AND UNCOMPETITIVE PRACTICES

#### *Powers for Director to require information*

#### **44 General power for Director to require information**

- (1) Where it appears to the Director that there are grounds for believing—
- (a) that a monopoly situation may exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, and
  - (b) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,
- the Director, for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation, may exercise the powers conferred by the next following subsection.
- (2) In the circumstances and for the purpose mentioned in the preceding subsection the Director may require any person who supplies or produces goods of the description in question in the United Kingdom, or to whom any such goods are supplied in the United Kingdom, or (as the case may be) any person who supplies services of that description in the United Kingdom, or for whom any such services are so supplied, to furnish to the Director such information as the Director may consider necessary with regard to—
- (a) the value, cost, price or quantity of goods of that description supplied or produced by that person, or of goods of that description supplied to him, or (as the case may be) the value, cost, price or extent of the services of that description supplied by that person or of the services of that description supplied for him, or
  - (b) the capacity of any undertaking carried on by that person to supply, produce or make use of goods of that description, or (as the case may be) to supply or make use of services of that description, or
  - (c) the number of persons employed by that person wholly or partly on work related to the supply, production or use of goods of that description, or (as the case may be) the supply or use of services of that description.

#### **45 Special power to require information with respect to complex monopoly situations**

- (1) Where it appears to the Director that there are grounds for believing—



- (a) that a complex monopoly situation may exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, and
- (b) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director may formulate proposals for requiring specified persons to furnish information to him in accordance with the proposals for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation.

- (2) The persons specified in any such proposals shall be persons appearing to the Director to be, or to be included among, those who, in relation to the production or supply of goods or to the supply of services of the description in question, or in relation to exports from the United Kingdom of goods of the description in question,—
  - (a) may be parties to any such agreement as is mentioned in paragraph (d) of section 6(1) or paragraph (d) of section 7(1) of this Act (or mentioned in either of those paragraphs as modified by section 9(2) of this Act) or may be parties to any such agreement as is mentioned in subsection (2) or subsection (3) of section 8 of this Act, or
  - (b) may be conducting their respective affairs as mentioned in section 6(2) or in section 7(2) of this Act.
- (3) Any such proposals shall also specify the description of goods or services in question, and—
  - (a) in a case falling within paragraph (a) of subsection (2) of this section, shall indicate the particular respects in which it appears to the Director that any agreement in question may be such an agreement as is referred to in that paragraph, or
  - (b) in a case falling within paragraph (b) of that subsection, shall indicate the particular respects in which it appears to the Director that the persons specified in the proposals may be conducting their respective affairs in a manner referred to in that paragraph,

and shall state what information the Director proposes that the persons specified in the proposals should be required to furnish for the purpose of indicating whether, in those respects, they are parties to such an agreement, or are so conducting their respective affairs, and, if so, of indicating in what circumstances they are parties to such an agreement or are so conducting their affairs.

- (4) Where the Director has formulated proposals under this section, he may submit those proposals to the Secretary of State for approval; and if the Secretary of State approves the proposals, with or without modifications, the Director may require any person specified in the proposals to furnish to the Director such information as the Director may specify in accordance with the proposals, or, if the proposals have been approved with modifications, in accordance with the proposals as so modified.

#### **46 Supplementary provisions as to requirements to furnish information**

- (1) Any power conferred on the Director by the preceding provisions of this Part of this Act to require a person to furnish information shall be exercisable by notice in writing served on that person.

- (2) Any person who refuses or wilfully neglects to furnish to the Director information required by such a notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.
- (3) Any person who, in furnishing information required by such a notice, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding £400 ;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### *Monopoly references*

#### **47 General provisions as to monopoly references**

- (1) A monopoly reference—
- (a) shall specify the description of goods or services to which it relates;
  - (b) in the case of a reference relating to goods, shall state whether it relates to the supply of goods or to exports of goods from the United Kingdom or to both ; and
  - (c) if, for the purposes of the reference, consideration is to be limited to a part of the United Kingdom, shall specify the part of the United Kingdom to which consideration is to be limited,
- and (subject to the next following subsection) shall be framed in one or other of the ways specified in section 48 or section 49 of this Act.
- (2) A monopoly reference (whether it falls within section 48 or within section 49 of this Act) may be so framed as to require the Commission to exclude from consideration, or to limit consideration to,—
- (a) such agreements as are mentioned in paragraph (d) of section 6(1) or paragraph (d) of section 7(1) of this Act (or in either of those paragraphs as modified by section 9(2) of this Act) or as are mentioned in subsection (2) or subsection (3) of section 8 of this Act, or
  - (b) agreements or practices whereby persons conduct their affairs as mentioned in section 6(2) or section 7(2) of this Act,
- or to exclude from consideration, or to limit consideration to, such one or more agreements or practices falling within paragraph (a) or paragraph (b) of this subsection as are specified in the reference.

#### **48 Monopoly reference limited to the facts**

A monopoly reference may be so framed as to require the Commission only to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—

- (a) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;
- (b) in favour of what person or persons that monopoly situation exists;

- (c) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or those persons for the purpose of exploiting or maintaining the monopoly situation and, if so, by what uncompetitive practices or in what other way; and
- (d) whether any action or omission on the part of that person or those persons is attributable to the existence of the monopoly situation and, if so, what action or omission and in what way it is so attributable ;

and a monopoly reference so framed is in this Act referred to as a " monopoly reference limited to the facts ".

#### **49 Monopoly reference not limited to the facts**

- (1) A monopoly reference may be so framed as to require the Commission to investigate and report on the question whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so, to investigate and report—
  - (a) on the questions mentioned in paragraphs (a) to (d) of section 48 of this Act, and
  - (b) on the question whether any facts found by the Commission in pursuance of their investigations under the preceding provisions of this subsection operate, or may be expected to operate, against the public interest.
- (2) A monopoly reference may be so framed as to require the commission to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—
  - (a) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;
  - (b) in favour of what person or persons that monopoly situation exists; and
  - (c) whether any action or omission on the part of that person or those persons in respect of matters specified in the reference for the purposes of this paragraph operates, or may be expected to operate, against the public interest.
- (3) For the purposes of subsection (2)(c) of this section any matter may be specified in a monopoly reference if it relates to any of the following, that is to say—
  - (a) prices charged, or proposed to be charged, for goods or services of the description specified in the reference ;
  - (b) any recommendation or suggestion made as to such prices;
  - (c) any refusal to supply goods or services of the description specified in the reference ;
  - (d) any preference given to any person (whether by way of discrimination in respect of prices or in respect of priority of supply or otherwise) in relation to the supply of goods or services of that description ;

and any matter not falling within any of the preceding paragraphs may be specified for those purposes in a monopoly reference if, in the opinion of the person or persons making the reference, it is of a kind such that (if a monopoly situation is found to exist) that matter might reasonably be regarded as a step taken for the purpose of exploiting or maintaining that situation or as being attributable to the existence of that situation.
- (4) A monopoly reference framed in either of the ways mentioned in subsections (1) and (2) of this section is in this Act referred to as a " monopoly reference not limited to the facts ".

## 50 Monopoly references by Director

- (1) Where it appears to the Director that a monopoly situation exists or may exist in relation to—
- (a) the supply of goods of any description, or
  - (b) the supply of services of any description, or
  - (c) exports of goods of any description from the United Kingdom, either generally or to any particular market,
- the Director, subject to section 12 of this Act and to the following provisions of this section, may if he thinks fit make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.
- (2) No monopoly reference shall be made by the Director with respect to the existence or possible existence of a monopoly situation in relation to the supply of goods or services of any description specified in Part I of Schedule 5 or in Part I of Schedule 7 to this Act.
- (3) Notwithstanding anything in subsections (3) and (4) of section 10 of this Act—
- (a) for the purposes of any monopoly reference made by the Director the supply of goods or services of any description specified in the first column of Part II of Schedule 5 or of Part II of Schedule 7 to this Act in any manner specified in relation to that description of goods or services in the second column of Part II of the relevant Schedule shall be taken to be a separate form of supply, and
  - (b) any monopoly reference made by the Director in relation to the supply of goods or services of any such description shall be limited so as to exclude that form of supply.
- (4) For the purposes of any monopoly reference made by the Director in relation to goods of any description specified in the first column of Part III of Schedule 7 to this Act—
- (a) the supply of goods of that description in Northern Ireland in any manner specified in relation to that description of goods in the second column of that Part of that Schedule shall be taken to be a separate form of supply, and, notwithstanding anything in section 10(3) and (4) of this Act, any monopoly reference so made in relation to the supply of goods of any such description in Northern Ireland shall be limited so as to exclude that form of supply, and
  - (b) for the purposes of any such monopoly reference the Director shall so exercise his powers under section 9 of this Act as to comply with the requirements of the preceding paragraph.
- (5) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 7 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.
- (6) On making a monopoly reference to the Commission, the Director shall send a copy of it to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the reference is first published in the Gazette in accordance with section 53 of this Act, the Secretary of State directs the Commission not to proceed with the reference,—
- (a) the Commission shall not proceed with that reference, but

- (b) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, notwithstanding that it relates wholly or partly to the same matters.

## **51 Monopoly references by Ministers**

- (1) Subject to the following provisions of this section, the Secretary of State, or the Secretary of State and any other Minister acting jointly, where it appears to him or them that a monopoly situation exists or may exist in relation to—
  - (a) the supply of goods of any description, or
  - (b) the supply of services of any description, or
  - (c) exports of goods of any description from the United Kingdom, either generally or to any particular market,may, if the Secretary of State (or, in the case of joint action by the Secretary of State and another Minister, each of them) thinks fit, make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.
- (2) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in the preceding subsection, and that the goods or services in question are of a description specified in Part I of, or in the first column of Part II of, Schedule 5 or Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with such one or more of the Ministers mentioned in the next following subsection as appear to him to have functions directly relating—
  - (a) to the supply of goods or services of that description in the area (whether consisting of the whole or part of the United Kingdom) in relation to which the question arises, or
  - (b) to exports of goods of that description from the United Kingdom,as the case may be.
- (3) The Ministers referred to in subsection (2) of this section are the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Northern Ireland, the Secretary of State for the Environment, the Minister of Agriculture, Fisheries and Food, the Minister of Agriculture for Northern Ireland, the Minister of Commerce for Northern Ireland and the Minister of Posts and Telecommunications.
- (4) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in subsection (1) of this section in relation to the supply in Northern Ireland of goods of a description specified in the first column of Part III of Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with the Minister of Agriculture for Northern Ireland.

## **52 Variation of monopoly reference**

- (1) Subject to the following provisions of this section, the Director may at any time vary a monopoly reference made by him, and the Secretary of State (or, in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) may vary a monopoly reference made by him or them.

- (2) A monopoly reference not limited to the facts shall not be varied so as to become a monopoly reference limited to the facts; but (subject to the following provisions of this section) a monopoly reference limited to the facts may be varied so as to become a monopoly reference not limited to the facts, whether the Commission have already reported on the reference as originally made or not.
- (3) A monopoly reference made by the Director shall not be varied so as to become a reference which he is precluded from making by any provisions of section 50 of this Act.
- (4) On varying a monopoly reference made by him, the Director shall send a copy of the variation to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the variation is first published in the Gazette in accordance with the next following section, the Secretary of State directs the Commission not to give effect to the variation,—
  - (a) the Commission shall proceed with the reference as if that variation had not been made, but
  - (b) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, or from giving effect to any subsequent variation, notwithstanding that it relates wholly or partly to the matters to which that variation related.
- (5) In this section and in sections 53 to 55 of this Act " Minister " includes the Minister of Agriculture for Northern Ireland and the Minister of Commerce for Northern Ireland.

### **53 Publication of monopoly references and variations, and of directions relating to them**

- (1) On making a monopoly reference, or a variation of a monopoly reference, the Director or, as the case may be, the Secretary of State (or, in the case of a monopoly reference or variation made by the Secretary of State acting jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) shall arrange for the reference or variation to be published in full in the Gazette, and shall arrange for the reference or variation to be published in such other manner as he or they may think most suitable for bringing it to the attention of persons who, in his or their opinion, would be affected by it.
- (2) Where the Secretary of State gives a direction under section 50(6) of this Act with respect to a monopoly reference, or gives a direction under section 52(4) of this Act with respect to a variation of a monopoly reference, the Secretary of State shall arrange for the direction to be published in the Gazette and otherwise in the same manner as the monopoly reference or variation was published in accordance with the preceding subsection.
- (3) In this section " the Gazette " means the London, Edinburgh and Belfast Gazettes, except that, in relation to a monopoly reference under which consideration is limited to a particular part of the United Kingdom in accordance with section 9 of this Act (including a reference under which consideration is required to be so limited by section 50(4)(b) of this Act), it means such one or more of those Gazettes as are appropriate to that part of the United Kingdom.
- (4) In sections 50 and 52 of this Act any reference to publication in the Gazette is a reference to publication in the London Gazette, the Edinburgh Gazette or the Belfast Gazette, whichever first occurs.

## 54 Report of Commission on monopoly reference

- (1) a report of the Commission on a monopoly reference—
  - (a) if the reference was made by the Director, shall be made to the Secretary of State, and
  - (b) in any other case, shall be made to the Minister or Ministers by whom the reference was made.
- (2) In making their report on a monopoly reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
  - (a) such an account of their reasons for those conclusions, and
  - (b) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (3) Where, on a monopoly reference not limited to the facts, the Commission find that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under subsection (1) or subsection (2) of section 49 of this Act operate, or may be expected to operate, against the public interest, the report shall specify those facts, and the conclusions to be included in the report, in so far as they relate to the operation of those facts, shall specify the particular effects, adverse to the public interest, which in their opinion those facts have or may be expected to have; and the Commission—
  - (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and
  - (b) may, if they think fit, include in their report recommendations as to such action.
- (4) In paragraph (a) of subsection (3) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—
  - (a) by one or more Ministers (including Ministers or departments of the Government of Northern Ireland) or other public authorities, or
  - (b) by the person or (as the case may be) one or more of the persons in whose favour, in accordance with the findings of the Commission, the monopoly situation in question exists.
- (5) Where, on a monopoly reference not limited to the facts, the Commission find—
  - (a) that a monopoly situation exists, and
  - (b) that the person (or, if more than one, any of the persons) in whose favour it exists is a party to an agreement to which Part I of the Act of 1956 applies,the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which Part I of that Act applies, operate, or may be expected to operate, against the public interest; and subsection (3) of this section, in so far as it refers to facts found by the Commission in pursuance of their investigations, shall have effect subject to the provisions of this subsection.

## **55 Time-limit for report on monopoly reference**

- (1) A monopoly reference shall specify a period within which the Commission are to report on the reference; and, if a report of the Commission on the reference—
- (a) is not made before the end of the period so specified, or
  - (b) if one or more extended periods are allowed under the next following subsection, is not made before the end of that extended period or of the last of those extended periods, as the case may be,
- the reference shall cease to have effect and no action, or (if action has already been taken) no further action, shall be taken in relation to that reference under this Act.
- (2) Directions may be given—
- (a) in the case of a monopoly reference made by the Director or by the Secretary of State otherwise than jointly with one or more Ministers, by the Secretary of State, or
  - (b) in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, by the Secretary of State and that Minister or those Ministers acting jointly,

allowing to the Commission such extended period for the purpose of reporting on the reference as may be specified in the directions, or, if the period has already been extended once or more than once by directions under this subsection, allowing to the Commission such further extended period for that purpose as may be so specified.

## **56 Order of appropriate Minister on report on monopoly reference**

- (1) The provisions of this section shall have effect where a report of the Commission on a monopoly reference not limited to the facts has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—
- (a) include conclusions to the effect that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under section 49 of this Act operate, or may be expected to operate, against the public interest, and
  - (b) specify particular effects, adverse to the public interest which in their opinion those facts have or may be expected to have.
- (2) In the circumstances mentioned in the preceding subsection the appropriate Minister may (subject to subsection (6) of this section) by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he considers it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection ; and those powers may be so exercised to such extent and in such manner as the appropriate Minister considers requisite for that purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the appropriate Minister shall take into account any recommendations included in the report of the Commission in pursuance of section 54(3)(b) of this Act and any advice given by the Director under section 88 of this Act.
- (4) Subject to the next following subsection, in this section " the appropriate Minister " means the Secretary of State.



- (5) Where, in any such report as is mentioned in subsection (1) of this section, the person or one of the persons specified as being the person or persons in whose favour the monopoly situation in question exists is a body corporate fulfilling the following conditions, that is to say—
- (a) that the affairs of the body corporate are managed by its members, and
  - (b) that by virtue of an enactment those members are appointed by a Minister,
- then for the purpose of making any order under this section in relation to that body corporate (but not for the purpose of making any such order in relation to any other person) " the appropriate Minister" in this section means the Minister by whom members of that body corporate are appointed.
- (6) In relation to any such body corporate as is mentioned in subsection (5) of this section, the powers exercisable by virtue of subsection (2) of this section shall not include the powers specified in Part II of Schedule 8 to this Act.

## PART V

### MERGERS

#### *Newspaper merger references*

#### **57 Meaning of "newspaper", "transfer of newspaper or of newspaper assets" and related expressions**

- (1) In this Part of this Act—
- (a) " newspaper " means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom;
  - (b) " newspaper proprietor" includes (in addition to an actual proprietor of a newspaper) any person having a controlling interest in a body corporate which is a newspaper proprietor, and any body corporate in which a newspaper proprietor has a controlling interest:
- and any reference to the newspapers of a newspaper proprietor includes all newspapers in relation to which he is a newspaper proprietor and, in the case of a body corporate, all newspapers in relation to which a person having a controlling interest in that body corporate is a newspaper proprietor.
- (2) In this Part of this Act " transfer of a newspaper or of newspaper assets" means any of the following transactions, that is to say—
- (a) any transaction (whether involving a transfer or not) by virtue of which a person would become, or would acquire the right to become, a newspaper proprietor in relation to a newspaper;
  - (b) any transfer of assets necessary to the continuation of a newspaper as a separate newspaper (including goodwill or the right to use the name of the newspaper);
  - (c) any transfer of plant or premises used in the publication of a newspaper, other than a transfer made without a view to a change in the ownership or control of the newspaper or to its ceasing publication;

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and " the newspaper concerned in the transfer ", in relation to any transaction falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, means the newspaper in relation to which (as mentioned in that paragraph) the transaction is or is to be effected.

- (3) In this Part of this Act " average circulation per day of publication ", in relation to a newspaper, means its average circulation for the appropriate period, ascertained by dividing the number of copies to which its circulation amounts for that period by the number of days on which the newspaper was published during that period (circulation being calculated on the basis of actual sales in the United Kingdom of the newspaper as published on those days); and for the purposes of this subsection " the appropriate period "—
- (a) in a case in which an application is made for consent under the next following section, means the period of six months ending six weeks before the date of the application, or
  - (b) in a case in which a transfer or purported transfer is made without any such application for consent, means the period of six months ending six weeks before the date of the transfer or purported transfer.
- (4) For the purposes of this section a person has a controlling interest in a body corporate if (but only if) he can, directly or indirectly, determine the manner in which one-quarter of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

## **58 Prohibition of certain newspaper mergers**

- (1) Subject to the following provisions of this section, a transfer of a newspaper or of newspaper assets to a newspaper proprietor whose newspapers have an average circulation per day of publication amounting, together with that of the newspaper concerned in the transfer, to 500,000 or more copies shall be unlawful and void, unless the transfer is made with written consent given (conditionally or unconditionally) by the Secretary of State.
- (2) Except as provided by subsections (3) and (4) of this section and by section 60(3) of this Act, the consent of the Secretary of State under the preceding subsection shall not be given in respect of a transfer until after the Secretary of State has received a report on the matter from the Commission.
- (3) Where the Secretary of State is satisfied that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then—
- (a) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission under this section;
  - (b) if he is satisfied that the newspaper is not intended to continue as a separate newspaper, he shall give his consent to the transfer, and shall give it unconditionally, without requiring such a report.
- (4) If the Secretary of State is satisfied that the newspaper concerned in the transfer has an average circulation per day of publication of not more than 25,000 copies, he may give his consent to the transfer without requiring a report from the Commission under this section.

- (5) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for any number specified in subsection (1) or subsection (4) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other number as is specified in the order.
- (6) In this section "satisfied" means satisfied by such evidence as the Secretary of State may require.

## **59 Newspaper merger reference**

- (1) Where an application is made to the Secretary of State for his consent to a transfer of a newspaper or of newspaper assets, the Secretary of State, subject to the next following subsection, shall, within one month after receiving the application, refer the matter to the Commission for investigation and report.
- (2) The Secretary of State shall not make a reference to the Commission under the preceding subsection in a case where—
  - (a) by virtue of subsection (3) of section 58 of this Act he is required to give his consent unconditionally without requiring a report from the Commission under this section, or
  - (b) by virtue of subsection (3) or subsection (4) of that section he has power to give his consent without requiring such a report from the Commission, and determines to exercise that power,or where the application is expressed to depend on the operation of subsection (3) or subsection (4) of that section.
- (3) On a reference made to them under this section (in this Act referred to as a "newspaper merger reference") the Commission shall report to the Secretary of State whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of news and free expression of opinion.

## **60 Time-limit for report on newspaper merger reference**

- (1) A report of the Commission on a newspaper merger reference shall be made before the end of the period of three months beginning with the date of the reference or of such further period (if any) as the Secretary of State may allow for the purpose in accordance with the next following subsection.
- (2) The Secretary of State shall not allow any further period for a report on such a reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the original period of three months; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.
- (3) If on such a reference the Commission have not made their report before the end of the period specified in subsection (1) or of any further period allowed under subsection (2) of this section, the Secretary of State may, without waiting for the report, give his consent to the transfer to which the reference relates.

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*Status: This is the original version (as it was originally enacted).*

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## **61 Report on newspaper merger reference**

- (1) In making their report on a newspaper merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and
  - (b) such a survey of the general position with respect to the transfer of a newspaper or of newspaper assets to which the reference relates, and of the developments which have led to that position,
- as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (2) Where on such a reference the Commission find that the transfer of a newspaper or of newspaper assets in question might operate against the public interest, the Commission shall consider whether any (and, if so, what) conditions might be attached to any consent to the transfer in order to prevent the transfer from so operating, and may, if they think fit, include in their report recommendations as to such conditions.

## **62 Enforcement provisions relating to newspaper mergers**

- (1) Any person who is knowingly concerned in, or privy to, a purported transfer of a newspaper or of newspaper assets which is unlawful by virtue of section 58 of this Act shall be guilty of an offence.
- (2) Where under that section the consent of the Secretary of State is given to a transfer of a newspaper or of newspaper assets, but is given subject to one or more conditions, any person who is knowingly concerned in, or privy to, a breach of that condition, or of any of those conditions, as the case may be, shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) No proceedings for an offence under this section shall be instituted—
- (a) in England or Wales, except by, or with the consent of, the Director of Public Prosecutions, or
  - (b) in Northern Ireland, except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

### *Other merger references*

## **63 Merger references to which ss.64 to 75 apply**

- (1) Sections 64 to 75 of this Act shall have effect in relation to merger references other than newspaper merger references ; and accordingly in those sections " merger reference " shall be construed—
- (a) as not including a reference made under section 59 of this Act, but
  - (b) as including any merger reference relating to a transfer of a newspaper or of newspaper assets, if the reference is made under section 64 or section 75 of this Act in a case falling within section 59(2) of this Act.
- (2) In the following provisions of this Part of this Act " enterprise " means the activities, or part of the activities, of a business.

## 64 Merger situation qualifying for investigation

- (1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that two or more enterprises (in this section referred to as "the relevant enterprises"), of which one at least was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom, have, at a time or in circumstances falling within subsection (4) of this section, ceased to be distinct enterprises, and that either—
  - (a) as a result, the condition specified in subsection (2) or in subsection (3) of this section prevails, or does so to a greater extent, with respect to the supply of goods or services of any description, or
  - (b) the value of the assets taken over exceeds £5 million.
- (2) The condition referred to in subsection (1)(a) of this section, in relation to the supply of goods of any description, is that 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, either—
  - (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 relevant enterprises (so far as they continue to be carried on) are carried on, or are supplied to those persons.
- (3) The condition referred to in subsection (1)(a) of this section, in relation to the supply of services of any description, is that 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, either—
  - (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 relevant enterprises (so far as they continue to be carried on) are carried on, or supply for those persons.
- (4) For the purposes of subsection (1) of this section enterprises shall be taken to have ceased to be distinct enterprises at a time or in circumstances falling within this subsection if either—
  - (a) they did so not earlier than six months before the date on which the merger reference relating to them is to be made, or
  - (b) they did so under or in consequence of arrangements or transactions which were entered into without prior notice being given to the Secretary of State or to the Director of material facts about the proposed arrangements or transactions and in circumstances in which those facts had not been made public, and notice of those facts was not given to the Secretary of State or to the Director or made public more than six months before the date mentioned in the preceding paragraph.
- (5) In determining whether to make a merger reference to the Commission the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a determination as soon as is reasonably practicable.
- (6) On making a merger reference, the Secretary of State shall arrange for it to be published in such manner as he thinks most suitable for bringing it to the attention of persons who in his opinion would be affected by it.
- (7) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for the sum specified in subsection (1)(b) of this section (whether as originally enacted or as previously varied

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by an order under this subsection) there shall be substituted such other sum (not being less than £5 million) as is specified in the order.

- (8) The fact that two or more enterprises have ceased to be distinct enterprises in the circumstances described in subsection (1) of this section (including in those circumstances the result specified in paragraph (a), or fulfilment of the condition specified in paragraph (b), of that subsection) shall, for the purposes of this Act, be regarded as creating a merger situation qualifying for investigation ; and in this Act " merger situation qualifying for investigation " and any reference to the creation of such a situation shall be construed accordingly.
- (9) In this section " made public " means so publicised as to be generally known or readily ascertainable.

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

- (1) For the purposes of this Part of this Act any two enterprises shall be regarded as ceasing to be distinct enterprises if either—
- (a) 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), or
  - (b) either of the enterprises ceases to be carried on at all and does so in consequence of any arrangements or transaction entered into to prevent competition between the enterprises.
- (2) For the purposes of the preceding subsection enterprises shall (without prejudice to the generality of the words " common control " in that subsection) be regarded as being under common control if they are—
- (a) enterprises of interconnected bodies corporate, or
  - (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) of this section be treated as having control of it.
- (4) For the purposes of subsection (1)(a) of this section, 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.

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

- (1) Where under or in consequence of the same arrangements or transaction, or under or in consequence of successive arrangements or transactions between the same parties or interests, successive events to which this subsection applies occur within a period of two years, then for the purposes of a merger reference those events may, if the Secretary of State thinks fit, be treated as having occurred simultaneously on the date on which the latest of them occurred.
- (2) The preceding subsection applies to any event whereby, under or in consequence of the arrangements or the transaction or transactions in question, any enterprises cease as between themselves to be distinct enterprises.
- (3) For the purposes of subsection (1) of this section any arrangements or transactions may be treated by the Secretary of State as arrangements or transactions between the same interests if it appears to him to be appropriate that they should be so treated, having regard to the persons who are substantially concerned in them.
- (4) Subject to the preceding provisions of this section, the time at which any two enterprises cease to be distinct enterprises, where they do so under or in consequence of any arrangements or transaction not having immediate effect, or having immediate effect in part only, shall be taken to be the time when the parties to the 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.
- (5) In accordance with subsection (4) of this section (but without prejudice to the generality of that subsection) 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

## **67 Valuation of assets taken over**

- (1) The provisions of this section shall have effect for the purposes of section 64(1)(b) of this Act.
- (2) Subject to subsection (4) of this section, the value of the assets taken over—
  - (a) shall be determined by taking the total value of the assets employed in, or appropriated to, the enterprises which cease to be distinct enterprises, except any enterprise which remains under the same ownership and control, or if none of the enterprises remains under the same ownership and control, then that one of the enterprises having the assets with the highest value, and
  - (b) shall be so determined by reference to the values at which, on the enterprises ceasing to be distinct enterprises or (if they have not then done so) on the making of the merger reference to the Commission, the assets stand in the books of the relevant business, less any relevant provisions for depreciation, renewals or diminution in value.
- (3) For the purposes of subsection (2) of this section any assets of a body corporate which, on a change in the control of the body corporate or of any enterprise of it, are dealt with in the same way as assets appropriated to any such enterprise shall be treated as appropriated to that enterprise.
- (4) Where in accordance with subsection (1) of section 66 of this Act events to which that subsection applies are treated as having occurred simultaneously, subsection (2)

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of this section shall apply with such adjustments as appear to the Secretary of State or to the Commission to be appropriate.

## **68 Supplementary provisions as to merger situations qualifying for investigation**

- (1) In relation to goods or services of any description which are the subject of different forms of supply—
  - (a) references in subsection (2) of section 64 of this Act to the supply of goods, or
  - (b) references in subsection (3) of that section to the supply of services,shall be construed in whichever of the following ways appears to the Secretary of State or the Commission, as the case may be, to be appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.
- (2) For the purposes of the preceding subsection the Secretary of State or the Commission may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Secretary of State or of the Commission, as the case may be, ought for the purposes of that subsection to be treated as a material difference.
- (3) For the purpose of determining whether the proportion of one-quarter mentioned in subsection (2) or subsection (3) of section 64 of this Act is fulfilled with respect to goods or services of any description, the Secretary of State or the Commission, as the case may be, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to the Secretary of State or the Commission to be most suitable in all the circumstances.
- (4) The criteria for determining when goods or services can be treated, for the purposes of section 64 of this Act, as goods or services of a separate description shall be such as in any particular case the Secretary of State thinks most suitable in the circumstances of that case.

## **69 Different kinds of merger references**

- (1) Subject to the following provisions of this Part of this Act, on a merger reference the Commission shall investigate and report on the questions—
  - (a) whether a merger situation qualifying for investigation has been created, and
  - (b) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.
- (2) A merger reference may be so framed as to require the Commission, in relation to the question whether a merger situation qualifying for investigation has been created, to exclude from consideration paragraph (a) of subsection (1) of section 64 of this Act, or to exclude from consideration paragraph (b) of that subsection, or to exclude one of those paragraphs if the Commission find the other satisfied.
- (3) In relation to the question whether any such result as is mentioned in section 64(1)(a) of this Act has arisen, a merger reference may be so framed as to require the Commission to confine their investigation to the supply of goods or services in a specified part of the United Kingdom.



- (4) A merger reference may require the Commission, if they find that a merger situation qualifying for investigation has been created, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation operates, or may be expected to operate, against the public interest.

#### **70 Time-limit for report on merger reference**

- (1) Every merger reference shall specify a period (not being longer than six months beginning with the date of the reference) within which a report on the reference is to be made ; and a report of the Commission on a merger reference shall not have effect, and no action shall be taken in relation to it under this Act, unless the report is made before the end of that period or of such further period (if any) as may be allowed by the Secretary of State in accordance with the next following subsection.
- (2) The Secretary of State shall not allow any further period for a report on a merger reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the period specified in the reference ; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.

#### **71 Variation of certain merger references**

- (1) Subject to the following provisions of this section, the Secretary of State may at any time vary a merger reference made under section 69(4) of this Act.
- (2) A merger reference made under section 69(4) of this Act shall not be so varied that it ceases to be a reference limited in accordance with that subsection.
- (3) Without prejudice to the powers of the Secretary of State under section 70 of this Act, a merger reference shall not be varied so as to specify a period within which a report on the reference is to be made which is different from the period specified in the reference in accordance with that section.

#### **72 Report of Commission on merger reference**

- (1) In making their report on a merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and
  - (b) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,
- as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (2) Where on a merger reference the Commission find that a merger situation qualifying for investigation has been created and that the creation of that situation operates or may be expected to operate against the public interest (or, in a case falling within subsection (4) of section 69 of this Act, find that one or more elements in or consequences of that situation which were specified in the reference in accordance with that subsection so operate or may be expected so to operate) the Commission shall specify in their report the particular effects, adverse to the public interest, which

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in their opinion the creation of that situation (or, as the case may be, those elements in or consequences of it) have or may be expected to have; and the Commission—

- (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and
  - (b) may, if they think fit, include in their report recommendations as to such action.
- (3) In paragraph (a) of subsection (2) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—
- (a) by one or more Ministers (including Ministers or departments of the Government of Northern Ireland) or other public authorities, or
  - (b) by one or more persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises.

### **73 Order of Secretary of State on report on merger reference**

- (1) The provisions of this section shall have effect where a report of the Commission on a merger reference has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—
- (a) include conclusions to the effect that a merger situation qualifying for investigation has been created and that its creation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest, and
  - (b) specify particular effects, adverse to the public interest, which in the opinion of the Commission the creation of that situation, or (as the case may be) those elements in or consequences of it, have or may be expected to have.
- (2) In the circumstances mentioned in the preceding subsection the Secretary of State may by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he may consider it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection ; and those powers may be so exercised to such extent and in such manner as the Secretary of State considers requisite for that purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the Secretary of State shall take into account any recommendations included in the report of the Commission in pursuance of section 72(2)(b) of this Act and any advice given by the Director under section 88 of this Act.

### **74 Interim order in respect of merger reference**

- (1) Where a merger reference has been made to the Commission, and does not impose on the Commission a limitation under section 69(4) of this Act, then, with a view to preventing action to which this subsection applies, the Secretary of State, subject to subsection (3) of this section, may by order made by statutory instrument—
- (a) prohibit or restrict the doing of things which in his opinion would constitute action to which this subsection applies, or

- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets, or
  - (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, or
  - (d) exercise any of the powers which, by virtue of paragraph 12 of Schedule 8 to this Act, are exercisable by an order under section 73 of this Act.
- (2) In relation to a merger reference the preceding subsection applies to any action which might prejudice the reference or impede the taking of any action under this Act which may be warranted by the Commission's report on the reference.
- (3) No order shall be made under this section in respect of a merger reference after whichever of the following events first occurs, that is to say—
- (a) the time (including any further period) allowed to the Commission for making a report on the reference expires without their having made such a report;
  - (b) the period of forty days beginning with the day on which a report of the Commission on the reference is laid before Parliament expires.
- (4) An order under this section made in respect of a merger reference (if it has not previously ceased to have effect) shall cease to have effect on the occurrence of whichever of those events first occurs, but without prejudice to anything previously done under the order.
- (5) Subsection (4) of this section shall have effect without prejudice—
- (a) to the operation, in relation to any such order, of section 134(1) of this Act, or
  - (b) to the operation of any order made under section 73 of this Act which exercises the same or similar powers to those exercised by the order under this section.

## **75 Reference in anticipation of merger**

- (1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.
- (2) Subject to the following provisions of this section, on a merger reference under this section the Commission shall proceed in relation to the prospective and (if events so require) the actual results of the arrangements proposed or made as, in accordance with the preceding provisions of this Part of this Act, they could proceed if the arrangements in question had actually been made, and the results in question had followed immediately before the date of the reference under this section.
- (3) A merger reference under this section may require the Commission, if they find that a merger situation qualifying for investigation has been created, or will be created if the arrangements in question are carried into effect, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation might be expected to operate against the public interest.
- (4) In relation to a merger reference under this section, sections 66, 67, 69, 71, 72, 73 and 74 of this Act shall apply subject to the following modifications, that is to say—

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- (a) section 66 shall apply with the necessary adaptations in relation to enterprises which will or may cease to be distinct enterprises under or in consequence of arrangements not yet carried into effect or not yet fully carried into effect;
  - (b) in section 67(4) the reference to subsection (1) of section 66 shall be construed as a reference to that subsection as modified in accordance with the preceding paragraph;
  - (c) in section 69, subsection (1) shall be construed as modified by subsection (2) of this section; in subsections (2) and (3) any reference to the question whether a merger situation qualifying for investigation has been created, or whether a result mentioned in section 64(1)(a) of this Act has arisen, shall be construed as including a reference to the question whether such a situation will be created or such a result will arise if the arrangements in question are carried into effect; and subsection (4) of that section shall not apply;
  - (d) in section 71, in section 72(2) and in section 74(1), the references to section 69(4) of this Act shall be construed as references to subsection (3) of this section ; and
  - (e) in section 73(1), the reference to conclusions to the effect that a merger situation qualifying for investigation has been created shall be construed as including a reference to conclusions to the effect that such a situation will be created if the arrangements in question are carried into effect.
- (5) If, in the course of their investigations on a merger reference under this section, it appears to the Commission that the proposal to make arrangements such as are mentioned in the reference has been abandoned, the Commission—
- (a) shall, if the Secretary of State consents, lay the reference aside, but
  - (b) shall in that case furnish to the Secretary of State such information as he may require as to the results until then of the investigations.

### *Supplementary*

## **76 Functions of Director in relation to merger situations**

It shall be the duty of the Director—

- (a) to take all such steps as are reasonably practicable for keeping himself informed about actual or prospective arrangements or transactions which may constitute or result in the creation of merger situations qualifying for investigation, and
- (b) to make recommendations to the Secretary of State as to any action under this Part of this Act which in the opinion of the Director it would be expedient for the Secretary of State to take in relation to any such arrangements or transactions.

## **77 Associated persons**

(1) For the following purposes, that is to say—

- (a) for the purpose of determining under section 57(1) of this Act whether a person is a newspaper proprietor and, if so, which newspapers are his newspapers;

- (b) for the purpose of determining under section 65 of this Act whether any two enterprises have been brought under common ownership or common control; and
- (c) for the purpose of determining what activities are carried on by way of business by any one person, in so far as that question arises in the application, by virtue of an order under section 73 of this Act, of paragraph 14 of Schedule 8 to this Act,

associated persons, and any bodies corporate which they or any of them control, shall (subject to the next following subsection) be treated as one person.

- (2) The preceding subsection shall not have effect—
  - (a) for the purpose mentioned in paragraph (a) of that subsection so as to exclude from section 58 of this Act any case which would otherwise fall within that section, or
  - (b) for the purpose mentioned in paragraph (b) of the preceding subsection so as to exclude from section 65 of this Act any case which would otherwise fall within that section.
- (3) A merger reference other than a newspaper merger reference (whether apart from this section the reference could be made or not) may be so framed as to exclude from consideration, either altogether or for any specified purpose or to any 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 the following persons shall be regarded as associated with one another, that is to say—
  - (a) any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife;
  - (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 husband or wife and relatives of any of them;
  - (d) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets.
- (5) The reference in subsection (1) of this section to bodies corporate which associated persons control shall be construed as follows, that is to say—
  - (a) in its application for the purpose mentioned in paragraph (a) of that subsection, " control" in that reference means having a controlling interest within the meaning of section 57(4) of this Act, and
  - (b) in its application for any other purpose mentioned in subsection (1) of this section, " control" in that reference shall be construed in accordance with section 65(3) and (4) of this Act.
- (6) In this section " relative " means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being taken into account as a relative or to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

## PART VI

### REFERENCES TO COMMISSION OTHER THAN MONOPOLY AND MERGER REFERENCES

#### 78 General references

- (1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time require the Commission to submit to him or them a report on the general effect on the public interest—
  - (a) of practices of a specified class which, in his or their opinion, are commonly adopted as a result of, or for the purpose of preserving, monopoly situations, or
  - (b) of any specified practices which appear to him or them to be uncompetitive practices.
- (2) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may also at any time require the Commission to submit to him or them a report on the desirability of action of any specified description for the purpose of remedying or preventing effects, adverse to the public interest, which result or might result from monopoly situations or from any such practices as are mentioned in the preceding subsection.
- (3) The matters to be taken into consideration by the Commission on any reference under this section shall not include any provisions of any agreement in so far as they are provisions by virtue of which it is an agreement to which Part I of the Act of 1956 applies.

#### 79 References as to restrictive labour practices

- (1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time refer to the Commission the questions—
  - (a) whether a practice of a description specified in the reference exists and, if so, whether it is a restrictive labour practice, and
  - (b) if it exists and is a restrictive labour practice, whether it operates or may be expected to operate against the public interest and, if so, what particular effects, adverse to the public interest, it has or may be expected to have.
- (2) A reference under this section may refer those questions to the Commission either—
  - (a) in relation to commercial activities in the United Kingdom generally, or
  - (b) in relation to such commercial activities in the United Kingdom as consist of the supply of goods of a description specified in the reference, or of the supply of services of a description so specified, or of the export from the United Kingdom of goods of a description so specified.
- (3) The Commission shall examine any questions referred to them under this section and shall report to the Minister or Ministers who referred them to the Commission.
- (4) For the purposes of their functions under subsection (3) of this section the Commission shall disregard anything which appears to them to have been done, or omitted to be done, in contemplation or furtherance of an industrial dispute within the meaning of the Industrial Relations Act 1971.
- (5) In this section "restrictive labour practice" means any practice whereby restrictions or other requirements, not being restrictions or requirements relating exclusively to rates

of remuneration, operate in relation to the employment of workers in any commercial activities in the United Kingdom or in relation to work done by any such workers, and are restrictions or requirements which—

- (a) could be discontinued without thereby contravening the provisions of an enactment or of any instrument having effect by virtue of an enactment, and
- (b) are not necessary for, or are more stringent than is necessary for, the efficient conduct of those activities.

## **80 Variation of reference under Part VI**

A reference made under this Part of this Act may at any time be varied by the Minister or Ministers by whom the reference was made.

## **PART VII**

### **PROVISIONS RELATING TO REFERENCES TO ADVISORY COMMITTEE OR TO COMMISSION**

## **81 Procedure in carrying out investigations**

- (1) The Advisory Committee, in carrying out an investigation on a reference to which section 17 of this Act applies, and the Commission, in carrying out an investigation on a reference made to them under this Act (whether it is a monopoly reference or a merger reference or a reference under Part VI of this Act),—
  - (a) shall take into consideration any representations made to them by persons appearing to them to have a substantial interest in the subject-matter of the reference, or by bodies appearing to them to represent substantial numbers of persons who have such an interest, and
  - (b) unless in all the circumstances they consider it not reasonably necessary or not reasonably practicable to do so, shall permit any such person or body to be heard orally by the Advisory Committee or the Commission, as the case may be, or by a member of the Committee or of the Commission nominated by them for that purpose.
- (2) Subject to subsection (1) of this section, the Advisory Committee or the Commission may determine their own procedure for carrying out any investigation on a reference under this Act, and in particular may determine—
  - (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise take part in the investigation, and
  - (b) the extent, if any, to which the sittings of the Advisory Committee or of the Commission are to be held in public.
- (3) In determining their procedure under subsection (2) of this section, and, in the case of the Commission, in exercising any powers conferred on them by section 85 of this Act, the Advisory Committee or the Commission, as the case may be, shall act in accordance with any general directions which may from time to time be given to them by the Secretary of State.
- (4) The Secretary of State shall lay before each House of Parliament a copy of any directions given by him under subsection (3) of this section.

## **82 General provisions as to reports**

- (1) In making any report under this Act the Advisory Committee or the Commission shall have regard to the need for excluding, so far as that is practicable,—
  - (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in their opinion, seriously and prejudicially affect the interests of that individual, and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or un-corporate, where publication of that matter would or might, in the opinion of the Advisory Committee or of the Commission, as the case may be, seriously and prejudicially affect the interests of that body, unless in their opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the report.
- (2) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Advisory Committee or of the Commission under this Act.
- (3) Subject to the next following subsection, if—
  - (a) on a reference to the Advisory Committee under this Act, or
  - (b) on a reference to the Commission, other than a monopoly reference limited to the facts,a member of the Advisory Committee or of the Commission, as the case may be, dissents from any conclusions contained in the report on the reference as being conclusions of the Committee or of the Commission, the report shall, if that member so desires, include a statement of his dissent and of his reasons for dissenting.
- (4) In relation to a report made by a group of members of the Commission in pursuance of paragraph 10 or paragraph 11 of Schedule 3 to this Act, subsection (3) of this section shall have effect subject to paragraph 14(1) of that Schedule.

## **83 Laying before Parliament and publication of reports**

- (1) The Minister or Ministers to whom any report of the Advisory Committee on a reference to which section 17 of this Act applies, or any report of the Commission under this Act, is made shall lay a copy of the report before each House of Parliament, and shall arrange for the report to be published in such manner as appears to the Minister or Ministers to be appropriate.
- (2) If such a report is presented by command of Her Majesty to either House of Parliament otherwise than at or during the time of a sitting of that House, the presentation of the report shall for the purposes of this section be treated as the laying of a copy of it before that House by the Minister or Ministers to whom the report was made.
- (3) If it appears to the Minister or Ministers to whom any report of the Advisory Committee or of the Commission under this Act is made that the publication of any matter in the report would be against the public interest, the Minister or Ministers shall exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.
- (4) Any reference in this Act to a report of the Advisory Committee or of the Commission as laid before Parliament shall be construed as a reference to the report in the form in which copies of it are laid (or by virtue of subsection (2) of this section are treated as having been laid) before each House of Parliament under this section.



## PART VIII

### ADDITIONAL PROVISIONS RELATING TO REFERENCES TO COMMISSION

#### 84 Public interest

- (1) In determining for any purposes to which this section applies whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability—
  - (a) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom;
  - (b) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied;
  - (c) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets ;
  - (d) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and
  - (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom.
- (2) This section applies to the purposes of any functions of the Commission under this Act other than functions to which section 59(3) of this Act applies.

#### 85 Attendance of witnesses and production of documents

- (1) For the purposes of any investigation on a reference made to them under this Act the Commission may, by notice in writing signed on their behalf by any of their members or by their secretary,—
  - (a) require any person to attend at a time and place specified in the notice, and to give evidence to the Commission or a member of the Commission nominated by them for the purpose, or
  - (b) require any person to produce, at a time and place specified in the notice, to the Commission or to any person nominated by the Commission for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation, or
  - (c) require any person carrying on any business to furnish to the Commission such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.
- (2) For the purposes of any such investigation the Commission, or a member of the Commission nominated by them for that purpose, may take evidence on oath, and for that purpose may administer oaths.
- (3) No person shall be compelled for the purpose of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce

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in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.

- (4) No person shall be required, in obedience to a notice under subsection (1) of this section, to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.
- (5) Any person who refuses or, without reasonable excuse, fails to do anything duly required of him by a notice under subsection (1) of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (6) Any person who—
  - (a) wilfully alters, suppresses or destroys any document which he has been required by any such notice to produce, or
  - (b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (8) In this section " the court "—
  - (a) in relation to England and Wales, means the High Court;
  - (b) in relation to Scotland, means the Court of Session; and
  - (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.

## **86 Director to receive copies of reports**

- (1) Subject to the next following subsection, a copy of every report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, shall be transmitted by the Commission to the Director; and the Minister or Ministers to whom any such report is made shall take account of any advice given to him or them by the Director with respect to a report of which a copy is transmitted to the Director under this section.
- (2) The preceding subsection shall not apply to a report made on a monopoly reference, where the reference was made by a Minister or Ministers and (by virtue of any of the provisions of section 50 of this Act) could not have been made by the Director.
- (3) In this section "Minister" includes the Minister of Agriculture for Northern Ireland and the Minister of Commerce for Northern Ireland.

## **87 Supplementary provisions as to laying reports before Parliament**

- (1) Where under section 83 of this Act the Secretary of State lays before Parliament a copy of a report of the Commission on a newspaper merger reference, then—
  - (a) if before laying it the Secretary of State has consented to the transfer of a newspaper or of newspaper assets to which the report relates, he shall annex a copy of that consent to the copy of the report laid before Parliament, or
  - (b) if he subsequently consents to that transfer, he shall thereupon lay before Parliament a copy of that consent.
- (2) Where the persons to whom a report of the Commission is made under this Act include the Minister of Agriculture for Northern Ireland, that Minister shall lay a copy of the report before the Senate and House of Commons of Northern Ireland, and shall arrange for it to be published in Northern Ireland in such manner as appears to him to be appropriate.
- (3) If a report to which subsection (2) of this section applies is presented by command of the Governor of Northern Ireland to the Senate or House of Commons of Northern Ireland otherwise than at or during the time of a sitting of the Senate or of that House, as the case may be, the presentation of the report shall for the purposes of that subsection be treated as the laying of a copy of it before the Senate or that House as required by that subsection.

## **88 Action by Director in consequence of report of Commission on monopoly or merger reference**

- (1) Where a report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, as laid before Parliament,—
  - (a) in the case of a monopoly reference, sets out such conclusions as are mentioned in section 56(1) of this Act, or
  - (b) in the case of a merger reference, sets out such conclusions as are mentioned in section 73(1) or in section 75(4)(e) of this Act,and a copy of the report is transmitted to the Director under section 86 of this Act, it shall be the duty of the Director, if requested by the appropriate Minister or Ministers to do so, to consult the relevant parties with a view to obtaining from them undertakings to take action indicated in the request made to the Director as being action requisite, in the opinion of the appropriate Minister or Ministers, for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) The Director shall report to the appropriate Minister or Ministers the outcome of his consultations under the preceding subsection; and if any undertaking is given by any of the relevant parties to take action indicated in the request made to the Director as mentioned in that subsection (in this section referred to as an "appropriate undertaking") the Minister to whom the undertaking is given shall furnish particulars of it to the Director.
- (3) Where in his consultations under subsection (1) of this section the Director seeks to obtain an appropriate undertaking from any of the relevant parties, and either—
  - (a) he is satisfied that no such undertaking is likely to be given by that party within a reasonable time, or
  - (b) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that no such undertaking has been given by that party,

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the Director shall give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances (including, if the Director thinks fit, advice with respect to the exercise by the appropriate Minister or Ministers of his or their powers under section 56 or section 73 of this Act, as the case may be).

- (4) Where the Director has made a report under subsection (2) of this section, and particulars of an undertaking given by any of the relevant parties have been furnished to the Director in accordance with that subsection, it shall be the duty of the Director—
- (a) to keep under review the carrying out of that undertaking, and from time to time to consider whether, by reason of any change of circumstances, it needs to be varied or to be superseded by a new undertaking, and
  - (b) if it appears to him that it has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (5) Where, in consequence of a report of which a copy is transmitted to the Director under section 86 of this Act, an order is made under section 56 or section 73 of this Act in relation to any of the matters to which the report relates, it shall be the duty of the Director to keep under review the action (if any) taken in compliance with that order, and from time to time to consider whether, by reason of any change of circumstances, the order should be varied or should be superseded by a new order, and—
- (a) if it appears to him that the order has in any respect not been complied with, to consider whether any action (by way of proceedings in accordance with section 93 of this Act or otherwise) should be taken for the purpose of securing compliance with the order, and (where in his opinion it is appropriate to do so) to take such action himself or give advice to any Minister or other person by whom such action might be taken, or
  - (b) if it appears to him that the order needs to be varied, or to be superseded by a new order, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (6) In this section " the relevant parties "—
- (a) in relation to a report of the Commission on a monopoly reference, means the person or persons specified in the report as being the person or persons in whose favour the monopoly situation in question exists ;
  - (b) in relation to a report of the Commission on a merger reference under section 75 of this Act, which includes a finding that a merger situation qualifying for investigation will be created if the arrangements in question are carried into effect, means any person indicated in the report as being a person by whom in accordance with the arrangements any assets are to be taken over;
  - (c) in relation to a report of the Commission on a merger reference, other than a newspaper merger reference or a reference falling within paragraph (b) of this subsection, means the persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises;

and, in relation to a report of the Commission, " the appropriate Minister or Ministers " means the Minister or Ministers to whom the report is made, " undertaking " means an undertaking given to that Minister or to one of those Ministers, as the case may be, and, in subsections (3) and (5) of this section, the references to section 73 of this Act shall be construed as including references to that section as applied by section 75(4) of this Act.

## **89 Interim order after report of Commission under s.54 or s.72**

- (1) The provisions of this section shall have effect where—
  - (a) in the circumstances specified in subsection (1) of section 56 of this Act the Secretary of State makes, or has under consideration the making of, an order under that section exercising any of the powers specified in Part II of Schedule 8 to this Act, or
  - (b) in the circumstances specified in subsection (1) of section 73 of this Act the Secretary of State makes, or has under consideration the making of, an order under that section exercising any of those powers;and in those provisions " the principal order " means the order which the Secretary of State makes, or has it under consideration to make, as mentioned in paragraph (a) or paragraph (b) of this subsection.
- (2) With a view to achieving the purpose for which any of the powers specified in Part II of that Schedule are, or are proposed to be, exercised by the principal order, the Secretary of State may by order made by statutory instrument exercise any of the powers mentioned in the next following subsection.
- (3) An order under this section may—
  - (a) prohibit or restrict the doing of things which, in the opinion of the Secretary of State, might impede the operation of the principal order or, where it has not yet been made, might be an impediment to making it;
  - (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 safe guarding 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 under this section) or in any other manner.

## **90 General provisions as to orders under ss.56, 73, 74 and 89**

- (1) This section applies to any order under section 56, section 73, section 74 or section 89 of this Act.
- (2) Any such order declaring anything to be unlawful may declare it to be unlawful either for all persons or for such persons as may be specified or described in the order.
- (3) Nothing in any such order shall have effect so as to apply to any person in relation to his conduct outside the United Kingdom unless that person is—
  - (a) a citizen of the United Kingdom and Colonies, or
  - (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or
  - (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons,but, in the case of a person falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, any such order may extend to acts or omissions outside the United Kingdom.
- (4) An order to which this section applies may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.

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- (5) Nothing in any order to which this section applies shall have effect so as to restrict the doing of anything for the purpose of restraining an infringement of a United Kingdom patent or so as to restrict any person as to the conditions which he attaches to a licence to do anything the doing of which would, but for the licence, be an infringement of a United Kingdom patent.
- (6) Nothing in any such order shall affect the conduct of a board established under a scheme made under the Agricultural Marketing Act 1958 or under the Agricultural Marketing Act (Northern Ireland) 1964.
- (7) An order to which this section applies may authorise the Minister making the order to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association,—
- (a) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order, or
  - (b) to do or refrain from doing anything so specified or described which he might be required by the order to do or refrain from doing,
- and may authorise that Minister to vary or revoke any directions so given.

## **91 Procedure relating to orders to which s.90 applies**

- (1) No order to which section 90 of this Act applies and which exercises any of the powers specified in Part II of Schedule 8 to this Act, and no order varying or revoking any such order, shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament; and the provisions of Schedule 9 to this Act shall have effect with respect to the procedure to be followed before laying before Parliament a draft of any such order.
- (2) Before making any order under section 56 or section 73 of this Act other than any such order as is mentioned in the preceding subsection, the Minister proposing to make the order shall publish, in such manner as appears to him to be appropriate, a notice—
- (a) stating his intention to make the order ;
  - (b) indicating the nature of the provisions to be embodied in the order; and
  - (c) stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before a date specified in the notice (that date being not earlier than the end of the period of thirty days beginning with the day on which publication of the notice is completed);
- and the Minister shall not make the order before the date specified in the notice in accordance with paragraph (c) of this subsection and shall consider any representations duly made to him in accordance with the notice before that date.

## **92 Investigation of company or association with reference to order to which s.90 applies**

- (1) For the purpose of determining whether to make an order to which section 90 of this Act applies whereby any powers are to be exercised in relation to a company or association, or for the purpose of obtaining information on which to exercise by or under any such order any powers in relation to a company or association, the

Secretary of State may appoint an inspector to investigate and report to him on any such matters falling within the next following subsection as are specified or described in the appointment.

- (2) The matters which may be so specified or described are any matters which, in the case of a company registered under the Companies Act 1948,—
  - (a) could in accordance with sections 165 and 166 of that Act be investigated by an inspector appointed under section 165 of that Act, or
  - (b) could in accordance with section 172 of that Act, or in accordance with any provisions as applied by subsection (5) of that section, be investigated by an inspector appointed under that section.
- (3) For purposes connected with any investigation made by an inspector appointed under this section—
  - (a) section 167 (or that section as applied by section 172(5)) of the Companies Act 1948 shall have effect as it has effect for the purposes of any investigation under section 165 or section 172 of that Act, and
  - (b) the provisions of that Act referred to in this and the last preceding subsection shall be taken to extend throughout the United Kingdom.

### **93 Enforcement of orders to which s.90 applies**

- (1) No criminal proceedings shall, by virtue of the making of an order to which section 90 of this Act applies, lie against any person on the grounds that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.
- (2) Nothing in the preceding subsection shall limit any right of any person to bring civil proceedings in respect of any contravention or apprehended contravention of any such order, and (without prejudice to the generality of the preceding words) compliance with any such order shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (3) If any person makes default in complying with any directions given under section 90(7) of this Act, the court may, on the application of the Secretary of State, make an order requiring him to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.
- (4) Any order of the court under subsection (3) of this section may provide that all the costs or expenses of or incidental to the application for the order shall be borne by any person in default or by any officers of a company or association who are responsible for its default.
- (5) In this section " the court"—
  - (a) in relation to England and Wales, means the High Court;
  - (b) in relation to Scotland, means the Court of Session; and
  - (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.

## PART IX

### AMENDMENTS OF RESTRICTIVE TRADE PRACTICES ACTS

#### **94 Transfer of functions of Registrar to Director**

- (1) Subject to the transitional provisions having effect by virtue of section 139 of this Act, the functions of the Registrar of Restrictive Trading Agreements are hereby transferred to the Director, and the office of Registrar of Restrictive Trading Agreements is hereby abolished.
- (2) In accordance with the preceding subsection, but without prejudice to any amendment made by any other provisions of this Act, in the Act of 1956, the Act of 1964 and the Act of 1968, for the words " the Registrar " or the words " the Registrar of Restrictive Trading Agreements ", in each place where they occur, there shall be substituted the words " the Director ".

#### **95 Agreements as to prices to be recommended or suggested for resale of goods**

Section 6(1) of the Act of 1956 (which provides for agreements under which restrictions are accepted on certain matters to be subject to Part I of the Act) and section 5(1) of the Act of 1968 (which makes similar provision in relation to information agreements) shall each be amended by inserting the following paragraph after paragraph (a):—

“(aa) the prices to be recommended or suggested as the prices to be charged or quoted in respect of the resale of goods supplied”.

#### **96 Subscriptions to trade associations**

In section 6 of the Act of 1956 (agreements to which Part I applies), after subsection (5) (which relates to obligations to make payments calculated by reference to certain variable factors) there shall be inserted the following proviso:—

“Provided that this subsection does not apply to any obligation on the part of any person to make payments to a trade association of which he is a member, if the payments are to consist only of bona fide subscriptions for membership of the association”.

#### **97 "Trade association" not to include certain approved societies**

In section 6(8) of the Act of 1956 (which contains a definition of " trade association"), after the words " or of persons represented by its members " there shall be inserted the words " and which is not a society for the time being approved under section 6A of this Act ".

#### **98 Wholesale co-operative societies**

After section 6 of the Act of 1956 there shall be inserted the following section:—

- (1) The Secretary of State may approve under this section any industrial and provident society which in his opinion fulfils the following conditions, that is to say—



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- (a) that it carries on business in the production or supply of goods or in the supply of services or in the application to goods of any process of manufacture ;
  - (b) that its shares are wholly or mainly held by industrial and provident societies ; and
  - (c) that those societies are retail societies or societies whose shares are wholly or mainly held by retail societies.
- (2) An approval given in respect of a society under this section shall (if it has not been previously withdrawn) expire at the end of the period of two years beginning with the date on which it was given or, if that period is extended (once or more than once) under the next following subsection, at the end of that period as so extended, or further extended, as the case may be.
- (3) The Secretary of State may extend or, if it has already been extended under this subsection, may further extend the period of two years referred to in subsection (2) of this section by such period, not exceeding two years, as he may specify.
- (4) The Secretary of State may at any time withdraw an approval given in respect of a society under this section if it appears to him—
- (a) that the society has made an agreement which . would have been subject to registration under this Part of this Act if the approval had not been given, or that such a recommendation as is mentioned in section 6(7) of this Act has been made by or on behalf of the society, and
  - (b) that the agreement or recommendation has such adverse effects on competition that it should not be precluded from being investigated by the Court under the following provisions of this Part of this Act.
- (5) On the expiry or withdrawal of an approval given in respect of a society under this section, the provisions of this Part of this Act shall have effect in relation to agreements and recommendations made by the society during the currency of the approval as if the society had not been approved under this section.
- (6) In this section—
- " industrial and provident society " means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or under the corresponding law in Northern Ireland ;
  - " retail society " means a society which carries on business in the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or in the provision of services for such individuals;
  - " the corresponding law in Northern Ireland " means the law for the time being in force in Northern Ireland for purposes corresponding to those of the Industrial and Provident Societies Act 1965 " ."

## **99 Agreements relating to coal or steel**

In section 7 of the Act of 1956, before subsection (2) there shall be inserted the following subsections:—

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“(1A) In determining whether an agreement is an agreement to which this Part of this Act applies, where—

- (a) the parties to the agreement are or include two or more bodies to which this subsection applies, and
- (b) restrictions relating to coal or steel, or relating to both coal and steel, are accepted under the agreement by two or more such bodies, whether the restrictions so accepted by those bodies are the same restrictions or different restrictions,

no account shall be taken of any such restriction which is accepted under the agreement by a body to which this subsection applies, whether that restriction is also accepted by any other party to the agreement or not

(1B) Subsection (1A) of this section applies to any body which, in accordance with Article 80 of the E.C.S.C. Treaty, constitutes an undertaking for the purposes of Articles 65 and 66 of that Treaty, and in that subsection " coal" and " steel" have the meanings assigned to them respectively by Annex I to that Treaty.”

## **100 Agreements to comply with standards of performance**

In section 7(3) of the Act of 1956 (which makes provision as to agreements to comply with standards of dimension, design or quality) in paragraph (a), for the words " or quality " there shall be substituted the words " quality or performance ".

## **101 Patent or design pooling agreements**

In section 8 of the Act of 1956, at the beginning of subsection (4) there shall be inserted the words " Subject to section 8A of this Act " ; and after that section there shall be inserted the following section:—

- (1) No licence, assignment or agreement shall by virtue of section 8(4) of this Act be precluded from being an agreement to which Part I of this Act applies if—
  - (a) in the case of an agreement, it is a patent or design pooling agreement, or
  - (b) whether being a licence, assignment or agreement, it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.
- (2) In this section (subject to subsection (4)) 'patent or design pooling agreement' means an agreement to which the parties are or include at least three persons (in this sub-section referred to as ' principal parties ') each of whom has an interest in one or more patents or registered designs, whereby each of the principal parties agrees, in respect of patents or registered designs in which he has an interest, or in respect of patents or registered designs in which he has or may during the currency of the agreement acquire an interest,—
  - (a) to grant an interest in one or more such patents or registered designs to one or more of the other principal parties, or to one or more of those parties and to other persons, or
  - (b) to grant an interest in at least one such patent or registered design to a third person for the purpose of enabling that person to grant an interest in it to one or more of the other principal parties, or to one or more of those parties and to other persons,

and 'interest', in relation to a patent or registered design, mean an interest as proprietor or licensee of the patent or registered design or an interest consisting of such rights as a person has by virtue of having applied for a patent or for the registration of a design or by virtue of having acquired the right to apply for a patent or for the registration of a design.

- (3) For the purposes of this section a licence, assignment or agreement—
- (a) shall be taken to be granted or made directly in pursuance of a patent or design pooling agreement if it is granted or made in pursuance of provisions of that agreement such as are mentioned in paragraph (a) of subsection (2) of this section, and
  - (b) shall be taken to be granted or made indirectly in pursuance of a patent or design pooling agreement if it is granted or made by a third person to whom an interest has been granted in pursuance of provisions of that agreement such as are mentioned in paragraph (b) of that subsection.
- (4) In relation to any interest held by or granted to any two or more persons jointly, subsection (2) of this section shall apply as if those persons were one person by whom the interest is held or to whom it is granted, and accordingly those persons shall be treated for the purposes of that subsection as together constituting one party”.

## **102 Particulars of export agreements to be furnished to Director**

- (1) The following subsection shall be added at the end of section 10 of the Act of 1956:—
- “(8) Subsections (1) to (6) of this section shall have effect in relation to any agreement which—
- (a) relates to exports from the United Kingdom, and
  - (b) would, but for section 8(8) of this Act, be an agreement subject to registration under this Part of this Act,
- as if, in those subsections, any reference to an agreement being or becoming subject to such registration were a reference to its being or becoming an agreement which, but for section 8(8) of this Act, would be subject to such registration.”
- (2) The following subsection shall be added at the end of section 14 of the Act of 1956:—
- “(4) In subsection (1) of this section the reference to an agreement subject to registration under this Part of this Act shall be construed as including a reference to any agreement which—
- (a) relates to exports from the United Kingdom, and
  - (b) would, but for section 8(8) of this Act, be an agreement subject to registration under this Part of this Act.”

(3) Subsection (1) of section 31 of the Act of 1956 (which requires particulars of agreements relating to exports to be furnished to the Secretary of State) shall cease to have effect.

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### **103 Examination on oath of certain employees of bodies corporate and unincorporated trade associations**

- (1) In subsection (3) of section 15 of the Act of 1956 (which in certain cases enables an order to be made for the attendance and examination on oath of an officer of a body corporate), after the words "director, manager, secretary or other officer of that body corporate " there shall be inserted the words " or of any person who (not being such a director, manager, secretary or other officer) is employed by the body corporate and appears to the Court to be likely to have particular knowledge of any of the matters in respect of which the notice was given ".
- (2) After that subsection there shall be inserted the following subsections:—
- “(3A) The provisions of subsection (3) of this section shall have effect in relation to a trade association which is not incorporated as they have effect in relation to a body corporate.
- (3B) Nothing in this section shall be taken to compel the disclosure by a barrister, advocate or solicitor of any privileged communication made by or to him in that capacity, or the production by him of any document containing any such communication.”

### **104 Extension of certain powers of Restrictive Practices Court**

- (1) In section 20 of the Act of 1956 (jurisdiction and powers of Restrictive Practices Court), in subsection (3) (which enables the Court to make orders imposing certain restraints on parties to an agreement in respect of restrictions found by the Court to be contrary to the public interest), after the words " United Kingdom " there shall be inserted the words " any trade association of which any such person is a member or any person acting on behalf of such a trade association " ; and at the end of that subsection there shall be added the words “or
- (c) where such an agreement as is mentioned in paragraph (b) of this subsection has already been made, from giving effect to that agreement or enforcing or purporting to enforce it;
- and, where any of the parties to the agreement against whom the order is made is a member of a trade association, the order may include provisions for restraining the trade association, and any person acting on its behalf, from procuring or assisting any such party to do anything which would be a contravention of the order in its application to him”.
- (2) In section 7 of the Act of 1968 (consequences of failure to register), in subsection (3) (which enables the Restrictive Practices Court to make orders imposing certain restraints on parties to an agreement of which particulars have not been duly furnished), after the words " United Kingdom " there shall be inserted the words " any trade association of which any such person is a member or any person acting on behalf of such a trade association " . and for the word " him " there shall be substituted the words " that person or association " ; and after that subsection there shall be inserted the following subsection:—
- “(3A) Where an order is made under subsection (3) of this section against any party to an agreement and that party is a member of a trade association, the order may include provisions for restraining the trade association, and any person

acting on its behalf, from procuring or assisting that party to do anything which would be a contravention of the order in its application to him”.

## **105 Interim orders of Restrictive Practices Court**

After section 21 of the Act of 1956 there shall be inserted the following section:—

- (1) Where the Director has made an application in respect of an agreement under subsection (1) of section 20 of this Act, then at any time, whether before or after the Court has made a declaration under that subsection in respect of the agreement, but before the Court has made an order in respect of it under subsection (3) of that section, the Director may apply to the Court for an interim order under this section.
- (2) An application under this section shall specify the restrictions which appear to the Director, in relation to the agreement to which the application relates,—
  - (a) to be restrictions such as are mentioned in section 20(1) of this Act, and
  - (b) to be contrary to the public interest, and
  - (c) to be restrictions in respect of which, in accordance with the following provisions of this section, it would be appropriate for an interim order to be made.
- (3) If on an application under this section the Court is satisfied that the following conditions are fulfilled in relation to all or any of the restrictions specified in the application, that is to say—
  - (a) that they are restrictions such as are mentioned in section 20(1) of this Act;
  - (b) that they could not reasonably be expected to be shown to fall within any of paragraphs (a) to (h) of section 21(1) of this Act; and
  - (c) that the operation of the restrictions, during the period likely to elapse before an order can be made in respect of them under section 20(3) of this Act, is likely to cause material detriment to the public or a section of the public generally, or to a particular person who is not a party to the agreement,the Court may, if it thinks fit, make an interim order specifying the restrictions in relation to which the Court is satisfied that those conditions are fulfilled.
- (4) Any such interim order may exercise, in respect of the restrictions specified in the order, any powers which could be exercised in respect of them by an order under section 20(3) of this Act if those restrictions had been found by the Court to be contrary to the public interest.
- (5) At any time when any such interim order is in force the Court, on the application of the Director or of any person who is subject to or entitled to the benefit of any restriction specified in the order, may discharge the order and substitute for it any interim order which could have been made on the original application under this section.
- (6) An interim order made under this section in respect of an agreement shall cease to have effect on the occurrence of whichever of the following first occurs, that is to say—
  - (a) the termination of such period, or the happening of such event, as may be specified for that purpose in the order;

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- (b) the discharge of the order by the Court;
- (c) a declaration by the Court that the restrictions specified in the interim order are not contrary to the public interest;
- (d) the final determination by the Court of an application under section 20(3) of this Act in respect of that agreement.”

## **106 Industrial and provident societies and their subsidiaries**

In section 36(1) of the Act of 1956, in the definition of " inter-connected bodies corporate ", after the words " all other bodies corporate which are its subsidiaries within the meaning of section one hundred and fifty-four of the Companies Act 1948 " there shall be inserted the words " or (in the case of an industrial and provident society) within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968 ".

## **PART X**

### EXTENSION OF ACT OF 1956 TO AGREEMENTS RELATING TO SERVICES

## **107 Order bringing under control restrictive agreements relating to services**

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as " services brought under control by the order ") and direct by the order that, subject to the following provisions of this Part of this Act, the agreements to which Part I of the Act of 1956 applies shall include agreements, whether made before or after the passing of this Act and whether before or after the making of the order, which—
  - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties, and
  - (b) are agreements under which restrictions, in respect of matters specified in the order for the purposes of this paragraph, are accepted by two or more parties.
- (2) A class of services described in an order under this section, as being the services brought under control by the order, may consist—
  - (a) of services of one or more descriptions specified in that behalf in the order, or
  - (b) of all services except services of one or more descriptions so specified, or
  - (c) of all services without exception.
- (3) The matters which may be specified in such an order for the purposes of subsection (1) (b) of this section are any of the following, that is to say—
  - (a) the charges to be made, quoted or paid for designated services supplied, offered or obtained;
  - (b) the terms or conditions on or subject to which designated services are to be supplied or obtained ;
  - (c) the extent (if any) to which, or the scale (if any) on which, designated services are to be made available, supplied or obtained ;

- (d) the form or manner in which designated services are to be made available, supplied or obtained ;
- (e) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services are to be made available or supplied or are to be obtained.

## **108 Order bringing under control information agreements relating to services**

- (1) The Secretary of State may by statutory instrument make an order in respect of a class of services described in the order (in this Act referred to, in relation to an order under this section, as " services brought under control by the order ") and direct by the order that, subject to the following provisions of this Part of this Act, the agreements to which Part I of the Act of 1956 applies shall include agreements, whether made before or after the passing of this Act and whether before or after the making of the order, which—
  - (a) are agreements between two or more persons carrying on business within the United Kingdom in the supply of services brought under control by the order, or between two or more such persons together with one or more other parties, and
  - (b) are agreements under which provision is made for or in relation to the furnishing by two or more parties to each other or to other persons (whether parties or not) of information with respect to matters specified in the order for the purposes of this paragraph.
- (2) A class of services described in an order under this section, as being the services brought under control by the order may consist—
  - (a) of services of one or more descriptions specified in that behalf in the order, or
  - (b) of all services except services of one or more descriptions so specified, or
  - (c) of all services without exception.
- (3) The matters which may be specified in such an order for the purposes of subsection (1) (b) of this section are any of the following, that is to say—
  - (a) the charges made, quoted or paid or to be made, quoted or paid for designated services which have been or are to be supplied, offered or obtained ;
  - (b) the terms or conditions on or subject to which designated services have been or are to be supplied or obtained;
  - (c) the extent (if any) to which, or the scale (if any) on which, designated services have been or are to be made available, supplied or obtained ;
  - (d) the form or manner in which designated services have been or are to be made available, supplied or obtained ;
  - (e) the costs incurred or to be incurred in making available, supplying or obtaining designated services;
  - (f) the persons or classes of persons for whom or from whom, or the areas or places in or from which, designated services have been or are to be made available or supplied or have been or are to be obtained.

## **109 Designated services**

- (1) In relation to any order made under section 107 or section 108 of this Act, " designated services " in this Part of this Act means services of any class described in the order as being designated services.

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- (2) Subject to the next following subsection, a class of services described in any such order as being designated services may consist wholly or partly of services brought under control by the order or wholly or partly of other services, and may be described so as to consist—
- (a) of services of one or more descriptions specified in that behalf in the order, or
  - (b) of all services except services of one or more descriptions so specified,
- and different classes of services may be so described in relation to different matters specified in the order for the purposes of section 107(1)(b) or section 108(1)(b) of this Act, as the case may be.
- (3) A class of services described in such an order as being designated services shall not include any of the services specified in Schedule 4 to this Act.

### **110 Supplementary provisions as to orders under s.107 or s.108**

- (1) An order under section 107 or section 108 of this Act may limit the operation of the order to agreements fulfilling such conditions (in addition to those mentioned in section 107 or section 108, as the case may be) as may be specified in the order.
- (2) In particular, but without prejudice to the generality of the preceding subsection, an order under section 108 of this Act may limit the operation of the order to agreements under which the provision for the furnishing of information (as mentioned in subsection (1)(b) of that section) is provision of a kind specified in the order or provides for the furnishing of information of a kind so specified.
- (3) Subject to subsection (1) of this section—
- (a) for the purposes of any order under section 107 of this Act it is immaterial whether any restrictions accepted by parties to an agreement relate to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section, or have the same or a different effect in relation to any matter so specified, and
  - (b) for the purposes of any order under section 108 of this Act it is immaterial whether any provision made by an agreement for or in relation to the furnishing of information relates to the same or to different matters specified in the order for the purposes of subsection (1)(b) of that section,
- and it is immaterial for those purposes whether the parties accepting any restrictions, or the parties by whom any information is to be furnished, as the case may be, carry on the same class or different classes of business.
- (4) Where, at a time when an order under section 107 or section 108 of this Act (in this subsection referred to as "the earlier order") is in force, another order (in this subsection referred to as "the subsequent order") is made under the same section, the subsequent order may provide that—
- (a) for the purposes of the earlier order, or
  - (b) for the purposes of the subsequent order, or
  - (c) for the purposes of both orders,
- the condition specified in subsection (1)(a) of section 107 or in subsection (1)(a) of section 108 of this Act, as the case may be, shall be treated as fulfilled in relation to an agreement if it is an agreement to which the parties are or include one person carrying on business in the United Kingdom in the supply of services brought under control by



the earlier order and one person carrying on business within the United Kingdom in the supply of services brought under control by the subsequent order.

- (5) Subsection (4) of this section shall have effect without prejudice to any power to vary any order made under section 107 or section 108 of this Act.
- (6) In the following provisions of this Part of this Act " the relevant enactments ", in relation to an order under section 107 or section 108 of this Act, means the provisions of this Part of this Act (including whichever of those sections is applicable) as they have effect in relation to that order and the provisions of the Act of 1956 and of the Act of 1968 as applied in relation to that order by the following provisions of this Part of this Act.

### **111 Procedure in relation to orders under s.107 or s.108**

- (1) No order shall be made under section 107 or section 108 of this Act unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (2) Before laying before Parliament a draft of any such order, the Secretary of State shall publish in such manner as he thinks appropriate a notice—
  - (a) describing the classes of services which, if the order is made, will be services brought under control by the order and will be designated services in relation to the order respectively;
  - (b) indicating the nature of any limitation to be imposed by the order under subsection (1) or subsection (2) of section 110 of this Act; and
  - (c) specifying a period (not being less than twenty-eight days) within which representations with respect to the proposed order may be made to the Secretary of State.
- (3) In settling the draft to be laid before Parliament the Secretary of State shall take into consideration any representations with respect to the proposed order which may be received by him within the period specified in the notice in accordance with subsection (2)(c) of this section.

### **112 Provisions as to certain associations**

- (1) For the purposes of any order made under section 107 or section 108 of this Act, and for the purposes of the operation of the relevant enactments in relation to any such order, subsections (2) to (5) of this section shall have effect in relation to any association (whether incorporated or not) if—
  - (a) its membership consists wholly or mainly of persons (in this subsection referred to as " members affected by the order ") who are either engaged in the supply of services brought under control by the order or are employed by or represent persons so engaged, and
  - (b) its objects or activities include the promotion of the interests of persons engaged in the supply of those services who are either members affected by the order or are persons represented by such members, and
  - (c) it is not a society which is for the time being approved under section 6A of the Act of 1956.
- (2) The relevant enactments shall have effect in relation to any agreement made by the association—

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- (a) as if the agreement were made between all persons who are members of the association or are represented on it by members of the association, and
  - (b) where any restriction is accepted under the agreement by the association, or provision is made in the agreement for or in relation to the furnishing of information by the association, as if the like restriction were accepted by, or (as the case may be) the like provision were made for or in relation to the furnishing of information by, each of the persons who are members of the association or are so represented.
- (3) Where the order is one made under section 107 of this Act, and specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, as to the action to be taken or not to be taken by them in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section, the relevant enactments shall have effect in relation to the agreement for the constitution of the association as if it contained a term by which each such member, and any person represented on the association by any such member, agreed to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the action to be taken by them in relation to the same class of services and in respect of the same matters.
- (4) Where the order is one made under section 108 of this Act, and specific recommendations (whether express or implied) are made by or on behalf of the association to its members, or to any class of its members, as to the furnishing of information in relation to any particular class of services in respect of any matters specified in the order for the purposes of subsection (1)(b) of that section, the relevant enactments shall have effect in relation to the agreement for the constitution of the association as if it contained a term by which each such member, and any person represented on the association by any such member, agreed to comply with those recommendations and with any subsequent recommendations made to them by or on behalf of the association as to the furnishing of information in relation to the same class of services and in respect of the same matters.
- (5) Subsection (3) or subsection (4) of this section (where applicable) shall have effect in relation to the agreement for the constitution of an association notwithstanding any provision to the contrary in that agreement.
- (6) In relation to a society which is for the time being approved under section 6A of the Act of 1956, but which, in consequence of an order made under section 107 or section 108 of this Act, is a society to which the preceding provisions of this section would apply if it were not so approved, subsection (4) of that section (which confers power on the Secretary of State to withdraw any such approval) shall have effect as if in that subsection—
  - (a) any reference to an agreement which would have been subject to registration under Part I of the Act of 1956 if the approval had not been given included a reference to an agreement which would in those circumstances have been subject to such registration by virtue of the order, and
  - (b) any reference to such a recommendation as is mentioned in section 6(7) of that Act included a reference to such a recommendation as is mentioned in subsection (3) or subsection (4) of this section.

### **113 Matters to be treated as equivalent to restrictions for purposes of s.107**

- (1) For the purposes of any order made under section 107 of this Act, and for the purposes of the operation of the relevant enactments in relation to any such order, an agreement which—
  - (a) confers privileges or benefits only upon such parties as comply with conditions as to any such matters as are mentioned in subsection (3) of that section, or
  - (b) imposes obligations upon parties who do not comply with such conditions,shall be treated as an agreement under which restrictions are accepted by each of the parties in respect of those matters.
- (2) Without prejudice to the preceding subsection, an obligation on the part of any party to an agreement to make payments calculated by reference to the extent to which, or the scale on which,—
  - (a) any designated services are made available or supplied by him, or
  - (b) any services are obtained by him for the purpose of making available or supplying any designated services,if the payments are calculated, or calculated at an increased rate, in respect of an extent or scale exceeding an extent or scale specified in or ascertained in accordance with the agreement, shall, subject to the next following subsection, be treated for the purposes mentioned in the preceding subsection as a restriction in respect of the extent or scale of the designated services to be made available or supplied.
- (3) Subsection (2) of this section shall not apply to any obligation on the part of any person to make payments to an association of which he is a member, if it is such an association as is mentioned in section 112(1) of this Act and the payments are to consist only of bona fide subscriptions for membership of the association.

### **114 Provisions to be disregarded**

- (1) The following provisions of this section shall have effect for the purpose of determining whether an agreement is one to which Part I of the Act of 1956 applies by virtue of an order made under section 107 or section 108 of this Act.
- (2) Subject to subsections (3) and (4) of this section, no account shall for that purpose be taken of any term which relates exclusively to the services supplied in pursuance of the agreement in question.
- (3) Where the order referred to in subsection (1) of this section is an order under section 107 of this Act, and any of the restrictions accepted as mentioned in subsection (1)(b) of that section are accepted as between two or more persons by whom designated services are to be supplied, or as between two or more persons for whom designated services are to be supplied, in pursuance of the agreement, subsection (2) of this section shall not apply to any term of the agreement which imposes those restrictions unless those restrictions are accepted in pursuance of a previous agreement in respect of which particulars have been registered under Part I of the Act of 1956 as applied by this Part of this Act.
- (4) Where the order referred to in subsection (1) of this section is an order made under section 108 of this Act, and the term referred to in subsection (2) of this section is a term by which provision is made for the furnishing of information as mentioned in subsection (1)(b) of that section by two or more persons by whom designated services

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are to be supplied, or by two or more persons for whom designated services are to be supplied, in pursuance of the agreement, subsection (2) of this section shall not apply to that term unless it was included in the agreement in pursuance of a previous agreement of which particulars have been registered under Part I of the Act of 1956 as applied by this Part of this Act.

- (5) For the purpose mentioned in subsection (1) of this section no account shall be taken of any term by which the parties or any of them agree to comply with or apply, in respect of making available, supplying or obtaining any designated services,—
- (a) any standards (whether being standards of performance in the provision of the services or standards of dimension, design, quality or performance in respect of goods used in providing them) which are either standards approved for the time being by the British Standards Institution or standards prescribed or adopted by an association or other body and for the time being approved by an order made by the Secretary of State by statutory instrument, or
  - (b) any arrangements either approved by the British Standards Institution, or prescribed or adopted and approved by an order of the Secretary of State, as mentioned in the preceding paragraph, as to the provision of information or advice to persons for whom designated services are supplied or agreed to be supplied.
- (6) For the purpose mentioned in subsection (1) of this section no account shall be taken of any restriction which affects or relates to any of the matters mentioned in section 7(4) of the Act of 1956 (which relates to employment and to terms and conditions of employment) or of any provision for or in relation to the furnishing of information with respect to any of those matters.

## **115 Excepted agreements**

- (1) Subsection (1) of section 8 of the Act of 1956 (which relates to agreements expressly authorised by or under an enactment) and subsection (2) of that section (which relates to agreements constituting or forming part of a scheme certified under provisions of the Income and Corporation Taxes Act 1970 relating to schemes for rationalising industry) shall have effect in relation to any agreement notwithstanding any order under section 107 or section 108 of this Act.
- (2) Part I of the Act of 1956 shall not apply by virtue of any such order to an agreement to which there are no parties other than one person who agrees to supply services and another person for whom they are to be supplied, where neither of those persons is, in relation to that order, such an association as is mentioned in section 112(1) of this Act and, except in respect of the supply of services of the same description to, or obtaining services of the same description from, other persons,—
- (a) in the case of an order under section 107 of this Act, no restrictions are accepted under the agreement by those parties in respect of matters specified in the order for the purposes of subsection (1)(b) of that section, or
  - (b) in the case of an order under section 108 of this Act, no provision is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purpose of subsection (1)(b) of that section.
- (3) Subject to the next following subsection, Part I of the Act of 1956 shall not apply by virtue of any such order to any licence granted by the proprietor or any licensee of a patent or by a person who has applied for a patent, to any assignment of a patent or of

the right to apply for a patent, or to any agreement for such a licence or assignment, if it is a licence, assignment or agreement under which—

- (a) in the case of an order under section 107 of this Act, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(b) of that section are accepted except in respect of the invention to which the patent or application for a patent relates, or
  - (b) in the case of an order under section 108 of this Act, no provision for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(b) of that section is made except in respect of that invention.
- (4) No licence, assignment or agreement shall by virtue of subsection (3) of this section be precluded from being an agreement to which Part I of the Act of 1956 applies if—
- (a) in the case of an agreement, it is a patent or design pooling agreement, or
  - (b) whether being a licence, assignment or agreement, it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.
- (5) Part I of the Act of 1956 shall not apply by virtue of any order under section 107 of this Act to an agreement between two persons, neither of whom is such an association as is mentioned in section 112(1) of this Act, for the exchange of information relating to techniques or processes to be applied in the provision of designated services where—
- (a) no other person is party to the agreement, and
  - (b) all such restrictions as are mentioned in section 107(1)(b) of this Act which are accepted under the agreement relate exclusively to the form or manner in which services incorporating those techniques or processes are to be made available or supplied.
- (6) Part I of the Act of 1956 shall not apply by virtue of any such order to any agreement where—
- (a) in the case of an order under section 107 of this Act, all such restrictions as are accepted under the agreement in respect of matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within subsection (3) of section 112 of this Act, all the recommendations referred to in that subsection) relate to the supply of services outside the United Kingdom or to the supply of services to persons or in relation to property outside the United Kingdom, or
  - (b) in the case of an order under section 108 of this Act, all such provision as is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within subsection (4) of section 112 of this Act, every such recommendation as is referred to in that subsection) relates to the supply of services as mentioned in the preceding paragraph.
- (7) Any reference in this section to restrictions accepted in respect of matters specified in an order under section 107 of this Act for the purposes of subsection (1)(b) of that section, or to provision made for or in relation to the furnishing of information with respect to matters specified in an order under section 108 of this Act for the purposes of subsection (1)(b) of that section, shall be construed, in relation to any agreement, as not including anything of which, by virtue of section 114 of this Act, account cannot be taken for the purpose mentioned in subsection (1) of that section.

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- (8) Subsections (2) to (4) of section 8A of the Act of 1956 shall have effect for the purposes of this section as they have effect for the purposes of that section.
- (9) In this section " property" means property of any description, whether movable or immovable.

## **116 Application of provisions of Acts of 1956 and 1968**

- (1) Subject to the following provisions of this section, sections 9 to 23 of the Act of 1956 shall have effect in relation to agreements to which Part I of that Act applies by virtue of an order under section 107 or section 108 of this Act as they have effect in relation to agreements to which Part I of that Act applies apart from any such order.
- (2) For the purposes of the application of those sections in relation to an agreement to which Part I of that Act applies by virtue of such an order, such of those sections as are specified in the first column of Part I of Schedule 10 to this Act shall have effect subject to the modifications specified in relation to them in the second column of that Part of that Schedule.
- (3) For the purposes of the application of section 21 of that Act in relation to an agreement to which Part I of that Act applies by virtue of such an order, that section shall have effect subject to the following modifications, that is to say—
  - (a) with the substitution, for paragraphs (a) and (b) of subsection (1), of the following paragraphs:—
    - “(a) that the restriction is reasonably necessary, having regard to the character of the services to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the use of those services or in connection with the consumption, installation or use of goods in relation to which those services are supplied;
    - (b) that the removal of the restriction would deny to the public as users of any services, or as purchasers, consumers or users of any goods in relation to which any services are supplied, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom”;
  - (b) with the substitution, for paragraph (d) of subsection (1), of the following paragraph:—
    - “(d) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of services to, or for obtaining services from, any one person not party thereto who controls a preponderant part of the trade or business of supplying such services, or for the supply of services to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such services”;
  - (c) with the substitution, in the provisions of that subsection after paragraph (h), for the words " (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar

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goods) " of the words " (being users of services supplied by such parties, or persons engaged or seeking to become engaged in any business of supplying such services or of making available or supplying similar services, or being purchasers, consumers or users of goods in relation to which any such services or similar services are supplied) ".

- (4) Sections 1 to 3 and sections 6 and 7 of the Act of 1968 shall have effect in relation to agreements to which Part I of the Act of 1956 applies by virtue of an order under section 107 or section 108 of this Act, but, in the case of such of those sections as are specified in the first column of Part II of Schedule 10 to this Act, shall have effect in relation to such agreements subject to the modifications specified in relation to them in the second column of that Part of that Schedule.
- (5) In section 9 of the Act of 1968 any reference to particulars entered or filed in the register pursuant to Part I of the Act of 1956 shall be construed as including a reference to particulars so entered or filed pursuant to any provisions of Part I of the Act of 1956 as applied by subsection (1) of this section.
- (6) Any reference in this section to any provisions of the Act of 1956 shall be construed as including a reference to those provisions as applied by section 5(2) of the Act of 1968 (which relates to information agreements); and the modifications of section 21 of the Act of 1956 made by subsection (3) of this section shall be construed accordingly.
- (7) Where by virtue of subsection (2) or subsection (4) of this section any provisions of the Act of 1956 or of the Act of 1968 are to have effect subject to modifications specified in Schedule 10 to this Act for the purposes of their application to an agreement to which Part I of the Act of 1956 applies by virtue of an order under section 107 or section 108 of this Act—
  - (a) that order shall be taken to be " the relevant order " referred to in those modifications, and
  - (b) in those modifications " the Act of 1973 " means this Act and " services brought under control by the relevant order" means services of the class described in that order in accordance with section 107(1) or section 108(1) of this Act.

## **117 Interpretation of Part X and Schedule 10**

- (1) In this Part of this Act, and in the modifications made by it, " services " does not include the application to goods of any process of manufacture or any services rendered to an employer under a contract of employment, but, with those exceptions, includes engagements (whether professional or other) which for gain or reward are undertaken and performed for any matter other than the production or supply of goods, and any reference to the supply of services or to supplying, obtaining or offering services or to making services available shall be construed accordingly.
- (2) In this Part of this Act and in the modifications made by it " business " includes a professional practice.
- (3) Subsection (3) of section' 6 (which relates to the meaning of " agreement" and " restriction ") and subsections (1) to (3) of section 36 (interpretation) of the Act of 1956 shall have effect for the purposes of this Part of this Act and of the modifications made by it.

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- (4) For the purposes of this Part of this Act any two or more interconnected bodies corporate, or any two or more individuals carrying on business in partnership with each other, shall be treated as a single person.
- (5) In this section any reference to the modifications made by this Part of this Act is a reference to any provisions which by virtue of section 116 of this Act (whether they are provisions set out in that section or in Schedule 10 to this Act) are to be treated, for purposes mentioned in that section, as substituted for provisions of the Act of 1956 or of the Act of 1968.

## PART XI

### PYRAMID SELLING AND SIMILAR TRADING SCHEMES

#### **118 Trading schemes to which Part XI applies**

- (1) This Part of this Act applies to any trading scheme which includes the following elements, that is to say—
- (a) goods or services, or both, are to be provided by the person promoting the scheme (in this Part of this Act referred to as " the promoter") or, in the case of a scheme promoted by two or more persons acting in concert (in this Part of this Act referred to as " the promoters "), are to be provided by one or more of those persons;
  - (b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is in this Part of this Act referred to as a " participant ");
  - (c) those transactions, or most of them, are to be effected elsewhere than at premises at which the promoter or any of the promoters or the participant effecting the transaction carries on business,- and
  - (d) the prospect is held out to participants of receiving payments or other benefits in respect of any one or more of the matters specified in the next following subsection.
- (2) The matters referred to in paragraph (d) of subsection (1) of this section are—
- (a) the introduction of other persons who become participants
  - (b) the promotion, transfer or other change of status of participants within the trading scheme;
  - (c) the supply of goods to other participants;
  - (d) the supply of training facilities or other services for other participants;
  - (e) transactions effected by other participants under which goods are to be supplied to, or services are to be supplied for, other persons.
- (3) For the purposes of this Part of this Act a trading scheme shall be taken to include the element referred to in paragraph (b) of subsection (1) of this section whether the transactions referred to in that paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity.
- (4) In determining, for the purposes of paragraph (c) of subsection (1) of this section, whether any premises are premises at which a participant in a trading scheme carries



on business, no account shall be taken of transactions effected or to be effected by him under that trading scheme.

- (5) For the purposes of this Part of this Act such a prospect as is mentioned in paragraph (d) of subsection (1) of this section shall be taken to be held out to a participant—
- (a) whether it is held out so as to confer on him a legally enforceable right or not, and
  - (b) in so far as it relates to the introduction of new participants, whether it is limited to the introduction of new participants by him or extends to the introduction of new participants by other persons.
- (6) In this Part of this Act " trading scheme " includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not.
- (7) In this section any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

## **119 Regulations relating to such trading schemes**

- (1) Regulations made by the Secretary of State by statutory instrument may make provision with respect to the issue, circulation or distribution of documents, whether being advertisements, prospectuses, circulars or notices, which—
- (a) contain any invitation to persons to become participants in a trading scheme to which this Part of this Act applies, or
  - (b) contain any information calculated to lead directly or indirectly to persons becoming participants in such a trading scheme,
- and may prohibit any such document from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not included in it as may be prescribed by the regulations.
- (2) Regulations made by the Secretary of State by statutory instrument may prohibit the promoter or any of the promoters of, or any participant in, a trading scheme to which this Part of this Act applies from—
- (a) supplying any goods to a participant in the trading scheme, or
  - (b) supplying any training facilities or other services for such a participant, or
  - (c) providing any goods or services under a transaction effected by such a participant, or
  - (d) being a party to any arrangements under which goods or services are supplied or provided as mentioned in any of the preceding paragraphs, or
  - (e) accepting from any such participant any payment, or any undertaking to make a payment, in respect of any goods or services supplied or provided as mentioned in any of paragraphs (a) to (d) of this subsection or in respect of any goods or services to be so supplied or provided,
- unless (in any such case) such requirements are as prescribed by the regulations are complied with.
- (3) Any requirements prescribed by regulations under subsection (2) of this section shall be such as the Secretary of State considers necessary or expedient for the purpose of preventing participants in trading schemes to which this Part of this Act applies from

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being unfairly treated; and, without prejudice to the generality of this subsection, any such requirements may include provisions—

- (a) requiring the rights and obligations of every participant under such a trading scheme to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters ;
- (b) specifying rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under any such trading scheme; or
- (c) imposing restrictions on the liabilities to be incurred by such a participant in respect of any of the matters mentioned in paragraphs (a) to (e) of subsection (2) of this section.

(4) Regulations made under subsection (2) of this section—

- (a) may include provision for enabling a person who has made a payment as a participant in a trading scheme to which this Part of this Act applies, in circumstances where any of the requirements prescribed by the regulations were not complied with, to recover the whole or part of that payment from any person to whom or for whose benefit it was paid, and
- (b) subject to any provision made in accordance with the preceding paragraph, may prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings.

(5) The power to make regulations under this section may be exercised so as to make different provision—

- (a) in relation to different descriptions of trading schemes to which this Part of this Act applies, or
- (b) in relation to trading schemes which are or were in operation on a date specified in the regulations and trading schemes which are or were not in operation on that date,

or in relation to different descriptions of participants in such trading schemes.

## **120 Offences under Part XI**

(1) Subject to the next following section, any person who issues, circulates or distributes, or causes another person to issue, circulate or distribute, a document in contravention of any regulations made under subsection (1) of section 119 of this Act shall be guilty of an offence.

(2) Any person who contravenes any regulations made under subsection (2) of that section shall be guilty of an offence.

(3) If any person who is a participant in a trading scheme to which this Part of this Act applies, or has applied or been invited to become a participant in such a trading scheme,

- (a) makes any payment to or for the benefit of the promoter or (if there is more than one) any of the promoters, or to or for the benefit of a participant in the trading scheme, and
- (b) is induced to make that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who become participants in the trading scheme,

any person to whom or for whose benefit that payment is made shall be guilty of an offence.

(4) If the promoter or any of the promoters of a trading scheme to which this Part of this Act applies, or any other person acting in accordance with such a trading scheme, by holding out to any person such a prospect as is mentioned in subsection (3)(b) of this section, attempts to induce him—

(a) if he is already a participant in the trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the trading scheme, or

(b) if he is not already a participant in the trading scheme, to become such a participant and to make any such payment as is mentioned in the preceding paragraph,

the person attempting to induce him to make that payment shall be guilty of an offence.

(5) In determining, for the purposes of subsection (3) or subsection (4) of this section, whether an inducement or attempt to induce is made by holding out such a prospect as is therein mentioned, it shall be sufficient if such a prospect constitutes or would constitute a substantial part of the inducement.

(6) Where the person by whom an offence is committed under subsection (3) or subsection (4) of this section is not the sole promoter of the trading scheme in question, any other person who is the promoter or (as the case may be) one of the promoters of the trading scheme shall, subject to the next following section, also be guilty of that offence.

(7) Nothing in subsections (3) to (6) of this section shall be construed as limiting the circumstances in which the commission of any act may constitute an offence under subsection (1) or subsection (2) of this section.

(8) In this section any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

## **121 Defences in certain proceedings under Part XI**

(1) Where a person is charged with an offence under subsection (1) of section 120 of this Act in respect of an advertisement, it shall be a defence for him to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know, and had no reason to suspect, that its publication would amount to an offence under that subsection.

(2) Where a person is charged with an offence by virtue of subsection (6) of section 120 of this Act, it shall be a defence for him to prove—

(a) that the trading scheme to which the charge relates was in operation before the commencement of this Act, and

(b) that the act constituting the offence was committed without his consent or connivance.

## **122 Penalties for offences under Part XI**

A person guilty of an offence under this Part of this Act shall be liable—

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- (a) on summary conviction, to a fine not exceeding £400 or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

### **123 Enforcement provisions**

- (1) The provisions of sections 29 to 32 of this Act shall have effect for the purposes of this Part of this Act as if in those provisions—
  - (a) references to a weights and measures authority or a duly authorised officer of such an authority were omitted, and
  - (b) any reference to an offence under section 23 of this Act were a reference to an offence under this Part of this Act.
- (2) For the purposes of the application to Northern Ireland of those provisions as applied by the preceding subsection—
  - (a) any reference to the Secretary of State shall be construed as a reference to the Ministry of Commerce for Northern Ireland, and
  - (b) paragraphs (c) and (d) of section 33(2) of this Act shall have effect as they have effect for the purposes of the application of Part II of this Act to Northern Ireland.

## **PART XII**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

### **124 Publication of information and advice**

- (1) With respect to any matter in respect of which the Director has any duties under section 2(1) of this Act, he may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers in the United Kingdom.
- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,—
  - (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual, and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.
- (3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in the United Kingdom.
- (4) In this section " relevant association " means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the production or supply of goods or in the supply of services or of persons employed by or

representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

## **125 Annual and other reports of Director**

- (1) The Director shall, as soon as practicable after the end of the year 1974 and of each subsequent calendar year, make to the Secretary of State a report on his activities, and the activities of the Advisory Committee and of the Commission, during that year.
- (2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's duties under any enactment (including any enactment contained in this Act, other than this section).
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) of this section before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) of this section, and may arrange for any such report to be published in such manner as he may consider appropriate.
- (5) In making any report under this Act the Director shall have regard to the need for excluding, so far as that is practicable, any such matter as is specified in paragraph (a) or paragraph (b) of section 124(2) of this Act.
- (6) For the purposes of this section any period between the commencement of this Act and the end of the year 1973 shall be treated as included in the year 1974.

## **126 Special provisions relating to patents**

The following subsections shall be substituted for subsections (3) and (4) of section 40 of the Patents Act 1949 (which confer certain powers on the comptroller where a report of the Commission relates to patented articles or processes):—

“(3) Where, on a reference under section 50 or section 51 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

- (a) that a monopoly situation (within the meaning of that Act) exists in relation to a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented process has been applied, or that such a situation exists in relation to a description of services in which a patented process is used, and
- (b) that facts found by the Commission in pursuance of their investigations under section 49 of that Act operate, or may be expected to operate, against the public interest,

the appropriate Minister or Ministers, subject to subsection (3B) of this section, may apply to the comptroller for an order under subsection (4) of this section in respect of the patent.

(3A) Where, on a reference under section 64 or section 75 of the Fair Trading Act 1973, a report of the Monopolies and Mergers Commission, as laid before Parliament, contains conclusions to the effect—

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- (a) that a merger situation qualifying for investigation has been created;
- (b) that one of the elements which constitute the creation of that situation is that the condition specified in subsection (2) or in subsection (3) of section 64 of that Act prevails (or does so to a greater extent) in respect of a description of goods which consists of or includes patented articles, or consists of or includes articles to which a patented process has been applied, or in respect of a description of services in which a patented process is used; and
- (c) that the creation of that situation, or particular elements in or consequences of it specified in the report, operate, or may be expected to operate, against the public interest,

the Secretary of State, subject to the next following subsection, may apply to the comptroller for an order under subsection (5) of this section in respect of the patent.

(3B) Before making an application under subsection (3) or subsection (3A) of this section, the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application, and shall consider any representations which, within the period of thirty days from the date of publication of the notice, may be made to him or them by persons whose interests appear to the appropriate Minister or Ministers to be likely to be affected by the proposed application.

- (4) If, on an application under subsection (3) of this section, it appears to the comptroller that the facts specified in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest include—
- (a) any conditions in a licence or licences granted by the patentee under the patent restricting the use of the invention by the licensee or the right of the patentee to grant other licences under the patent, or
  - (b) a refusal by the patentee to grant licences under the patent on reasonable terms,

the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words 'licences of right'.

- (5) If on an application under subsection (3A) of this section it appears to the comptroller that the particular matters indicated in the report of the Monopolies and Mergers Commission as being those which, in the opinion of the Commission, operate or may be expected to operate against the public interest (whether those matters are so indicated in pursuance of a requirement imposed under section 69(4) or section 75(3) of the Fair Trading Act 1973 or otherwise) include any such condition or refusal as is mentioned in paragraph (a) or paragraph (b) of subsection (4) of this section, the comptroller may by order cancel or modify any such condition or may, if he thinks fit, instead of making such an order or in addition to making such an order, order the patent to be endorsed with the words 'licences of right'.
- (6) In this section 'the appropriate Minister or Ministers' in relation to a report of the Monopolies and Mergers Commission, means the Minister or Ministers to whom the report is made."

## **127 Additional power to make orders under Agricultural Marketing Act 1958**

The following section shall be inserted in the Agricultural Marketing Act 1958 after section 19:—

- (1) The provisions of this section shall have effect where a report made by the Monopolies and Mergers Commission under section 54 of the Fair Trading Act 1973, as laid before Parliament, contains conclusions to the effect—
  - (a) that certain matters indicated in the report operate, or may be expected to operate, against the public interest, and
  - (b) that those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme.
- (2) In the circumstances mentioned in subsection (1) of this section, the Minister shall have the like power to make orders under section 19 of this Act as if those conclusions of the Monopolies and Mergers Commission—
  - (a) had been to the effect that the provision of the scheme in question, or the act or omission of the board to which those conclusions relate, were contrary to the interests of consumers of the regulated product, and
  - (b) had been contained in a report of a committee of investigation.”

## **128 Order superseded by declaration of Restrictive Practices Court**

Where an application is made to the Restrictive Practices Court under subsection (2) of section 30 of the Act of 1956 (which in certain circumstances enables an application to be made to that Court to declare whether proposed restrictions are contrary to the public interest) and—

- (a) on that application the Court makes a declaration under that subsection in relation to a restriction proposed to be accepted under an agreement, and
- (b) by virtue of an order under section 56 of this Act which is for the time being in force, the making or carrying out of an agreement under which that restriction was accepted would be unlawful,

the order under section 56 of this Act shall cease to have effect in so far as it renders unlawful the making or carrying out of an agreement under which that restriction is accepted.

## **129 Time-limit for prosecutions**

- (1) No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, a magistrates' court may try an information for an offence under this Act if the information was laid within twelve months from the commission of the offence.
- (3) Notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, summary proceedings in Scotland for an offence under this Act may be commenced within twelve months from the commission of the offence, and subsection (2) of the said section 23 shall apply for the purposes of this subsection as it applies for the purposes of that section.

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- (4) In the application of this section to Northern Ireland, for the references in subsection (2) to section 104 of the Magistrates' Courts Act 1952 and to the trial and laying of an information there shall be substituted respectively references to section 34 of the Magistrates' Courts Act (Northern Ireland) 1964 and to the hearing and determination and making of a complaint.

### **130 Notice to Director of intended prosecution**

- (1) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under section 23 of this Act, or for an offence under the Trade Descriptions Act 1968, other than an offence under section 28(5) or section 29 of that Act, it shall, as between the authority and the Director, be the duty of the authority to give to the Director notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded, and to postpone institution of the proceedings until either—
- (a) twenty-eight days have elapsed since the giving of that notice, or
  - (b) the Director has notified the authority that he has received the notice and the summary of the facts.
- (2) In relation to offences under the Trade Descriptions Act 1968, the preceding subsection shall have effect subject to the transitional provisions having effect by virtue of section 139 of this Act.

### **131 Notification of convictions and judgments to Director**

- (1) Where in any criminal proceedings a person is convicted of an offence by or before a court in the United Kingdom, or a judgment is given against a person in civil proceedings in any such court, and it appears to the court—
- (a) having regard to the functions of the Director under Part III of this Act, that it would be expedient for the conviction or judgment to be brought to his attention, and
  - (b) that it may not be brought to his attention unless arrangements for the purpose are made by the court,
- the court may make arrangements for that purpose notwithstanding that the proceedings have been finally disposed of by the court.
- (2) In this section " judgment" includes any order or decree, and any reference to the giving of a judgment shall be construed accordingly.

### **132 Offences by bodies corporate**

- (1) Where an offence under section 23, section 46, section 85(6) or Part XI of this Act, which has been 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, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section shall apply 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.



### **133 General restrictions on disclosure of information**

- (1) Subject to subsections (2) to (4) of this section, no information with respect to any particular business which has been obtained under or by virtue of the provisions (other than Part II) of this Act or under or by virtue of the Act of 1956 or the Act of 1968 shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.
- (2) The preceding subsection does not apply to any disclosure of information which is made—
  - (a) for the purpose of facilitating the performance of any functions of the Director, the Commission, the Secretary of State or any other Minister under this Act, the Act of 1956 or the Act of 1968, or
  - (b) in pursuance of a Community obligation within the meaning of the European Communities Act 1972.
- (3) Subsection (1) of this section does not apply to any disclosure of information which is made for the purposes of any proceedings before the Restrictive Practices Court or of any other legal proceedings, whether civil or criminal, under this Act, the Act of 1956 or the Act of 1968.
- (4) Nothing in subsection (1) of this section shall be construed—
  - (a) as limiting the matters which may be included in, or made public as part of, a report of the Advisory Committee or of the Commission ;
  - (b) as limiting the particulars which may be entered or filed in, or made public as part of, the register under Part I of the Act of 1956; or
  - (c) as applying to any information which has been made public as part of such a report or as part of that register.
- (5) Any person who discloses any information in contravention of this section shall be guilty of an offence and shall be liable—
  - (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (6) In this section references to this Act shall be construed as including references to any enactment repealed by this Act.

### **134 Provisions as to orders**

- (1) Any statutory instrument whereby any order is made under any of the preceding provisions of this Act, other than a provision which requires a draft of the order to be laid before Parliament before making the order, or whereby any regulations are made under this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any power conferred by any provision of this Act to make an order by statutory instrument shall include power to revoke or vary the order by a subsequent order made under that provision.

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### **135 Financial provisions**

- (1) The Secretary of State shall pay all remuneration, allowances or other sums payable under this Act to or in respect of persons who are or have been members of the Advisory Committee or the Commission, and shall defray—
  - (a) all expenses duly incurred by the Commission in the payment of remuneration or allowances payable under this Act to staff of the Commission, and
  - (b) to such amount as the Secretary of State with the approval of the Minister for the Civil Service may determine, all other expenses duly incurred by the Advisory Committee or the Commission.
- (2) There shall be defrayed out of moneys provided by Parliament—
  - (a) all expenses incurred by the Secretary of State in consequence of the provisions of this Act;
  - (b) any expenses incurred in consequence of those provisions by any other Minister of the Crown or government department, not being a Minister or department of the Government of Northern Ireland;
  - (c) the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director, any other sums payable under this Act to or in respect of the Director, and any expenses duly incurred by the Director or by any of his staff in consequence of the provisions of this Act;
  - (d) any increase attributable to this Act in the sums payable out of moneys so provided under the Superannuation Act 1972.
- (3) The Secretary of State shall for each financial year pay into the Exchequer of Northern Ireland such sum as the Secretary of State and the Ministry of Commerce for Northern Ireland may agree to be appropriate, as representing the expenses incurred by that Ministry in enforcing the provisions of any order made under section 22 of this Act, in so far as any such order provides for matters with respect to which the Parliament of Northern Ireland does not have power to make laws.

### **136 Powers of Parliament of Northern Ireland**

The Parliament of Northern Ireland shall have the same power to pass Acts with respect to any matter as they would have had if this Act had not been passed ; and, in the event of any inconsistency between any Act of the Parliament of Northern Ireland passed after the passing of this Act and any provision of this Act or any order or other instrument having effect by virtue of this Act, the Act of the Parliament of Northern Ireland shall, in Northern Ireland, prevail.

### **137 General interpretation provisions**

- (1) In this Act—
  - " the Act of 1948 " means the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 ;
  - " the Act of 1956 " means the Restrictive Trade Practices Act 1956;
  - " the Act of 1964 " means the Resale Prices Act 1964 ;
  - " the Act of 1965 " means the Monopolies and Mergers Act 1965 ;
  - " the Act of 1968 " means the Restrictive Trade Practices Act 1968 ;
  - " assignment ", in relation to Scotland, means assignation ;

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" contract of employment " means 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;

" scale " (where the reference is to the scale on which any services are, or are to be, made available, supplied or obtained) means scale measured in terms of money or money's worth or in any other manner.

(2) Except in so far as the context otherwise requires, in this Act, except in Part X, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" the Advisory Committee " means the Consumer Protection Advisory committee;

" agreement " means any agreement or arrangement, in whatever way and in 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;

" commercial activities in the United Kingdom " means any of the following, that is to say, the production and supply of goods in the United Kingdom, the supply of services in the United Kingdom and the export of goods from the United Kingdom ;

" the Commission " means the Monopolies and Mergers Commission;

" complex monopoly situation " has the meaning assigned to it by section 11 of this Act;

" consumer " (subject to subsection (6) of this section) means any person who is either—

(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;

" the Director " means the Director General of Fair Trading;

" enactment " includes an enactment of the Parliament of Northern Ireland;

" goods " includes buudings and other structures, and also includes ships, aircraft and hovercraft, but does not include electricity;

" group " (where the reference is to a group of persons fulfilling specified conditions, other than the condition of being interconnected bodies corporate) means any two or more persons fulfilling those conditions, whether apart from fulfilling them they would be regarded as constituting a group or not;

" merger reference " has the meaning assigned to it by section 5(3) of this Act;

" merger situation qualifying for investigation " has the meaning assigned to it by section 64(8) of this Act;

" Minister " includes a government department but shall not by virtue of this provision be taken to include the establishment consisting of the Director

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and his staff, and, except where the contrary is expressly provided, does not include any Minister or department of the Government of Northern Ireland ;

" monopoly reference " and " monopoly situation " have the meanings assigned to them by section 5(3) of this Act;

" newspaper merger reference " has the meaning assigned to it by section 59(3) of this Act;

" practice " means any practice, whether adopted in pursuance of an agreement or otherwise ;

" price " includes any charge or fee, by whatever name called;

" produce ", in relation to the production of minerals or other substances, includes getting them, and, in relation to the production of animals or fish, includes taking them;

" 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 ;

" uncompetitive practices " means practices having the effect of preventing, restricting or distorting competition in connection with any commercial activities in the United Kingdom;

" worker " (subject to subsection (7) of this section) has the meaning assigned to it by section 167 of the Industrial Relations Act 1971.

- (3) In the provisions of this Act other than Part X (and without prejudice to the construction of that Part in accordance with section 117 of this Act) "the supply of services" does not include the rendering of any services under a contract of employment but, with that exception,—
- (a) includes the undertaking and performance for gain or reward of engagements (whether professional or other) for any matter other than the supply of goods, and
  - (b) includes both the rendering of services to order and the provision of services by making them available to potential users;
- and any reference in those provisions to services supplied or to be supplied, or to services provided or to be provided, shall be construed accordingly.
- (4) For the purposes of this Act, except Part X, " services" includes electricity.
- (5) For the purposes of the provisions of this Act other than Part X, any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 154 of the Companies Act 1948) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate ; and in those provisions " 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.
- (6) For the purposes of the application of any provision of this Act in relation to goods or services of a particular description or to which a particular practice applies, " consumers" means persons who are consumers (as defined by subsection (2) of this section) in relation to goods or services of that description or in relation to goods or services to which that practice applies.
- (7) For the purposes of the application of this Act to Northern Ireland, the definition of " worker " in subsection (2) of this section shall apply as if the Industrial Relations Act 1971 extended to Northern Ireland but, in section 167(2)(a) of that Act, references to

general medical services, pharmaceutical services, general dental services or general ophthalmic services provided under the enactments mentioned in that subsection were references to the corresponding services provided in Northern Ireland under the corresponding enactments there in force.

- (8) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

### **138 Supplementary interpretation provisions**

- (1) This section applies to the following provisions of this Act, that is to say, section 2(4), Parts II and III, section 137(6), and the definition of " consumer" contained in section 137(2),
- (2) For the purposes of any provisions to which this section applies it is immaterial whether any person supplying goods or services has a place of business in the United Kingdom or not.
- (3) For the purposes of any provisions to which this section applies any goods or services supplied wholly or partly outside, the United Kingdom, if they are supplied in accordance with arrangements made in the United Kingdom, whether made orally or by one or more documents delivered in the United Kingdom or by correspondence posted from and to addresses in the United Kingdom, shall be treated as goods supplied to, or services supplied for, persons in the United Kingdom.
- (4) In relation to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the person conducting any antecedent negotiations, as well as the owner or seller, shall for the purposes of any provisions to which this section applies be treated as a person supplying or seeking to supply the goods.
- (5) Subsection (4) of this section shall be construed—
- (a) in relation to England and Wales, in accordance with subsections (1), (3), (4) and (5) of section 58 of the Hire-Purchase Act 1965 ;
  - (b) in relation to Scotland, in accordance with subsections (1), (3), (4) and (5) of section 54 of the Hire-Purchase (Scotland) Act 1965 ; and
  - (c) in relation to Northern Ireland, in accordance with subsections (1), (3), (4) and (5) of section 65 of the Hire-Purchase Act (Northern Ireland) 1966.
- (6) In any provisions to which this section applies—
- (a) any reference to a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of such a person, and
  - (b) any reference to the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as such a guarantor ;
- and in this subsection " guarantor ", in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier of the goods or services against any loss which he may incur in respect of the supply of the goods or services to or for that person.
- (7) For the purposes of any provisions to which this section applies goods or services supplied by a person carrying on a business shall be taken to be supplied in the course

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of that business if payment for the supply of the goods or services is made or (whether under a contract or by virtue of an enactment or otherwise) is required to be made.

### **139 Amendments, repeals and transitional provisions**

- (1) Subject to the transitional provisions and savings contained in Schedule 11 to this Act—
  - (a) the enactments specified in Schedule 12 to this Act shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential upon the preceding provisions of this Act), and
  - (b) the enactments specified in Schedule 13 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The provisions of Schedule 11 to this Act shall have effect for the purposes of this Act.

### **140 Short title, citation, commencement and extent**

- (1) This Act may be cited as the Fair Trading Act 1973.
- (2) The Restrictive Trade Practices Act 1956, the Restrictive Trade Practices Act 1968, Parts IX and X of this Act, Schedules 4 and 10 to this Act and so much of Schedules 12 and 13 to this Act as relates to those Acts may be cited together as the Restrictive Trade Practices Acts 1956 to 1973.
- (3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint; and different dates may be so appointed for, or for different purposes of, any one or more of the provisions of this Act (including, in the case of section 139 of this Act, the amendment or repeal of different enactments specified in Schedule 12 or Schedule 13 to this Act or of different provisions of any enactment so specified).
- (4) Where any provision of this Act, other than a provision contained in Schedule 11, refers to the commencement of this Act, it shall be construed as referring to the day appointed under this section for the coming into operation of that provision.
- (5) This Act extends to Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### DIRECTOR GENERAL OF FAIR TRADING

- 1 There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Secretary of State with the approval of the Minister for the Civil Service may determine.
- 2 In the case of any such holder of the office of the Director as may be determined by the Secretary of State with the approval of the Minister for the Civil Service, there shall be paid such pension, allowance or gratuity to or in respect of him on his retirement or death, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined.
- 3 If, when any person ceases to hold office as the Director, it appears to the Secretary of State with the approval of the Minister for the Civil Service that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be so determined.
- 4 In the House of Commons Disqualification Act 1957, in Part III of Schedule 1 (other disqualifying offices) there shall (at the appropriate place in alphabetical order) be inserted the following entry:—

“Director General of Fair Trading”;

and the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to that Act in its application to the Senate and House of Commons of Northern Ireland.
- 5 The Director shall have an official seal for the authentication of documents required for the purposes of his functions.
- 6 The Documentary Evidence Act 1868 shall have effect as if the Director were included in the first column of the Schedule to that Act, as if the Director and any person authorised to act on behalf of the Director were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any document issued by the Director or by any such person.
- 7 Anything authorised or required by or under this Act or any other enactment to be done by the Director, other than the making of a statutory instrument, may be done by any member of the staff of the Director who is authorised generally or specially in that behalf in writing by the Director.

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## SCHEDULE 2

Section 3.

### CONSUMER PROTECTION ADVISORY COMMITTEE

#### *Status of Committee*

- 1       Members of the Advisory Committee in their capacity as such shall not be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

#### *Tenure of office of members*

- 2       (1) Subject to the following provisions of this paragraph, a member of the Advisory Committee shall hold and vacate office as such in accordance with the terms of his appointment.
- (2) A person shall not be appointed to the Advisory Committee for a term exceeding three years; but previous membership shall not affect eligibility for re-appointment.
- (3) A member of the Advisory Committee may at any time resign his membership by notice in writing addressed to the Secretary of State.
- (4) The Secretary of State may remove a member of the Advisory Committee on the ground of incapacity or misbehaviour.

#### *Tenure of office of chairman and deputy chairman*

- 3       (1) The chairman or deputy chairman of the Advisory Committee may at any time resign his office as such by notice in writing addressed to the Secretary of State.
- (2) The Secretary of State may remove a chairman or deputy chairman of the Advisory Committee on the ground of incapacity or misbehaviour.

#### *Remuneration and allowances*

- 4       There shall be paid to the members of the Advisory Committee such remuneration, and such travelling and other allowances, as in the case of any of those members the Secretary of State may determine with the approval of the Minister for the Civil Service.

#### *General provisions as to sums payable on retirement or death of members*

- 5       As regards any member of the Advisory Committee in whose case the Secretary of State may so determine with the approval of the Minister for the Civil Service, the Secretary of State shall pay such pension, allowance or gratuity to or in respect of him, or make such payments towards the provision of such a pension, allowance or gratuity, as may be so determined.
- 6       If, when any person ceases to be a member of the Advisory Committee, it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may pay him a sum by way of compensation of such amount as he may determine with the approval of the Minister for the Civil Service.



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### *Procedure of Committee*

- 7 In the case of an equality of votes on any question at a meeting of the Advisory Committee the chairman shall have a second or casting vote.
- 8 At any time when the chairman is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman, the deputy chairman may perform any of the functions of the chairman.
- 9 At any time when the chairman and deputy chairman of the Advisory Committee are absent or otherwise incapable of acting or there is a vacancy in the office of chairman and of deputy chairman, such member of the Advisory Committee as the Secretary of State may direct, or in default of any such direction such member of the Advisory Committee as the Advisory Committee may agree, may perform any of the functions of the chairman.

## SCHEDULE 3

Section 4.

### THE MONOPOLIES AND MERGERS COMMISSION

#### **PART I**

##### STATUS, TERMS OF OFFICE, AND STAFF

#### *Status of Commission*

- 1 Members of the Commission in their capacity as such shall not be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown.

#### *Tenure of office of regular members*

- 2 (1) Subject to the following provisions of this paragraph, a regular member of the Commission shall hold and vacate office as such in accordance with the terms of his appointment.
- (2) A person shall not be appointed to be a regular member of the Commission for a term exceeding five years ; but previous membership shall not affect eligibility for re-appointment.
- (3) A regular member of the Commission may at any time resign his membership by notice in writing addressed to the Secretary of State.
- (4) The Secretary of State may remove a regular member of the Commission on the ground of incapacity or misbehaviour.

#### *Appointment and tenure of office of chairman and deputy chairmen*

- 3 (1) There shall be a chairman of the Commission appointed from among the regular members by the Secretary of State; and the Secretary of State may appoint not more than three other regular members to be deputy chairmen.

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- (2) The chairman or a deputy chairman may at any time resign his office as such by notice in writing addressed to the Secretary of State.
- (3) The Secretary of State may remove a chairman or deputy chairman of the Commission on the ground of incapacity or misbehaviour.
- (4) If the chairman or a deputy chairman of the Commission ceases to be a regular member of the Commission, he shall also cease to be chairman or, as the case may be, a deputy chairman.

### *Staff*

- 4       The Commission shall have a secretary, who shall be a person appointed by the Commission with the approval of the Secretary of State.
- 5       The Commission may appoint such other staff as the Commission think fit, subject to the approval of the Secretary of State and of the Minister for the Civil Service as to numbers and as to terms and conditions of service.

### *Remuneration and allowances*

- 6       There shall be paid to the members of the Commission such remuneration, and such travelling and other allowances, as in the case of any of those members the Secretary of State may determine with the approval of the Minister for the Civil Service.
- 7       There shall be paid to the staff of the Commission such remuneration, and such travelling and other allowances, as the Commission may determine with the approval of the Secretary of State and of the Minister for the Civil Service.

### *General provisions as to sums payable on retirement or death of members*

- 8       As regards any member of the Commission in whose case the Secretary of State may so determine with the approval of the Minister for the Civil Service, the Secretary of State shall pay such pension, allowance or gratuity to or in respect of him, or make such payments towards the provision of such a pension, allowance or gratuity, as may be so determined.
- 9       If, when any person ceases to be a member of the Commission, it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may pay him a sum by way of compensation of such amount as he may determine with the approval of the Minister for the Civil Service.

## **PART II**

### PERFORMANCE OF FUNCTIONS OF COMMISSION

- 10     (1) If the chairman of the Commission so directs—
  - (a) the functions of the Commission in relation to any investigation under this Act, in so far as those functions have not been performed before the direction is given, or
  - (b) the functions of the Commission in relation to the making of a report required of them under Part VI of this Act,

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shall be performed through a group of not less than five regular members of the Commission selected by the chairman of the Commission.

- (2) In the following provisions of this Part of this Schedule " group " means a group of members of the Commission selected under this paragraph, and " the chairman " (except where the reference is expressly to the chairman of a group) means the chairman of the Commission.
- 11 Where, after a direction under paragraph 10 of this Schedule has been given with respect to the investigations on a monopoly reference or on a merger reference, the reference is varied under section 52 of this Act or, in the case of a merger reference, under section 71 of this Act, the functions of the Commission in relation to those investigations shall be performed either through the group specified in that direction, or through another group, or by the Commission as a whole, as the chairman may direct.
- 12 The chairman may appoint one of the members of a group to act as chairman of the group.
- 13 (1) Where during the proceedings of a group—  
(a) a member of the group ceases to be a member of the Commission, or  
(b) the chairman is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group,  
the chairman may appoint any member of the Commission to be a member of the group in his place.
- (2) The chairman may also at any time appoint any member of the Commission to be an additional member of a group, whether the person so appointed was or was not a member of the Commission at the time when the group was originally selected.
- 14 (1) At the invitation of the chairman of a group, any member of the Commission who is not a member of the group may attend meetings or otherwise take part in the proceedings of the group, except that such a member shall not be entitled—  
(a) to vote at any such meeting or in any such proceedings, or  
(b) to have a statement of his dissent from a conclusion of the group included in a report made by them,
- (2) Nothing in the receding sub-paragraph shall be taken to prevent a group or a member of a group from consulting any member of the Commission with respect to any matter or question with which the group is concerned.
- 15 In determining their procedure, and in exercising any powers conferred on the Commission by this Act, a group shall comply with any special or general directions which may be given to them by the Commission, as well as with any directions given to the Commission by the Secretary of State.
- 16 (1) Subject to the next following sub-paragraph, anything done by or in relation to a group in, or in connection with, the performance of functions required by a direction under paragraph 10 or paragraph 11 of this Schedule to be performed by the group shall have the same effect as if it had been done by or in relation to the Commission,
- (2) For the purposes of sections 56 and 75 of this Act, of section 40 of the Patents Act 1949 (which confers on the comptroller certain powers which are exercisable with reference to a report of the Commission) and of section 19A of the Agricultural Marketing Act 1958, a conclusion contained in a report of the Commission shall be

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disregarded if the report is made through a group and the conclusion is not that of at least two-thirds of the members of the group.

- 17      The quorum necessary—
- (a) for any meeting of the Commission held for the final settling of a report of the Commission shall be not less than two-thirds of the regular members of the Commission, and
- (b) for any other meeting of the Commission shall be such as the Commission may from time to time determine.
- 18      The quorum necessary for a meeting of a group shall be such as the group may from time to time determine.
- 19      In the case of an equality of votes on any question at a meeting of the Commission or of a group the chairman, or the chairman of the group, as the case may be, shall have a second or casting vote.
- 20      At any time when the chairman is absent or otherwise incapable of acting, or there is a vacancy in the office of chairman,—
- (a) such one of the deputy chairmen of the Commission as the Secretary of State may direct, or in default of any such direction such one of them as they may agree, or
- (b) if there is only one deputy chairman of the Commission the deputy chairman,
- may perform any of the functions of the chairman.
- 21      At any time when every person who is chairman or deputy chairman of the Commission is absent or otherwise incapable of acting, or there is no such person, such member of the Commission as the Secretary of State may direct, or in default of any such direction such member of the Commission as the Commission may agree, may perform any of the functions of the chairman.
- 22      For the purposes of a newspaper merger reference the Secretary of State may appoint three, four, or five additional members of the Commission, from a panel maintained by the Secretary of State for the purpose of making such appointments ; and if any functions of the Commission in relation to that reference are performed through a group, any additional members appointed under this paragraph for the purposes of the reference shall be members of the group in addition to the members selected by the chairman.

## SCHEDULE 4

Sections 14 and 109.

### SERVICES EXCLUDED FROM SECTIONS 14 AND 109

- 1      Legal services (that is to say, the services of barristers, advocates or solicitors in their capacity as such).
- 2      Medical services (that is to say, the provision of medical or surgical advice or attendance and the performance of surgical operations).
- 3      Dental services (that is to say, any services falling within the practice of dentistry within the meaning of the Dentists Act 1957).
- 4      Ophthalmic services (that is to say, the testing of sight).

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- 5 Veterinary services (that is to say, any services which constitute veterinary surgery within the meaning of the Veterinary Surgeons Act 1966).
- 6 Nursing services (that is to say, any services which constitute nursing within the meaning of the Nurses Act 1957, the Nurses (Scotland) Act 1951 or the Nurses and Midwives Act (Northern Ireland) 1970).
- 7 The services of midwives, physiotherapists or chiropodists in their capacity as such.
- 8 The services of architects in their rapacity as such.
- 9 Accounting and auditing services (that is to say, the making or preparation of accounts or accounting records and the examination, verification and auditing of financial statements).
- 10 The services of patent agents (within the meaning of the Patents Act 1949), in their capacity as such.
- 11 The services of parliamentary agents entered in the register in either House of Parliament as agents entitled to practise both in promoting and in opposing Bills, in their capacity as such parliamentary agents.
- 12 The services of surveyors (that is to say, of surveyors of land, of quantity surveyors, of surveyors of buildings or other structures and of surveyors of ships) in their capacity as such surveyors.
- 13 The services of professional engineers or technologists (that is to say, of persons practising or employed as consultants in the field of—
  - (a) civil engineering ;
  - (b) mechanical, aeronautical, marine, electrical or electronic engineering ;
  - (c) mining, quarrying, soil analysis or other forms of minerology or geology ;
  - (d) agronomy, forestry, livestock rearing or ecology ;
  - (e) metallurgy, chemistry, biochemistry or physics ; or
  - (f) any other form of engineering or technology analogous to those mentioned in the preceding sub-paragraphs),in their capacity as such engineers or technologists.
- 14 Services consisting of the provision—
  - (a) of primary, secondary or further education within the meaning of the Education Act 1944, the Education (Scotland) Acts 1939 to 1971 or the Education and Libraries (Northern Ireland) Order 1972, or
  - (b) of university or other higher education not falling within the preceding sub-paragraph.
- 15 The services of ministers of religion in their capacity as such ministers.

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## SCHEDULE 5

Sections 16, 50 and 51.

### GOODS AND SERVICES REFERRED TO IN SECTION 16

#### PART I

##### GENERAL RESTRICTION

- 1 Gas supplied through pipes, otherwise than for industrial purposes as mentioned in section 9(4) of the Continental Shelf Act 1964.
- 2 Natural gas (that is to say, gas derived from natural strata) in so far as it does not fall within the preceding paragraph.
- 3 Electricity.
- 4 The carriage of passengers by road or rail.
- 5 The carriage of goods by rail.
- 6 The services of conveying, receiving, collecting, despatching and delivering letters.
- 7 The running of any system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of any of the matters specified in paragraphs (a) to (d) of section 24(1) of the Post Office Act 1969.

#### PART II

##### LIMITED RESTRICTION

<i>Description of goods or services</i>	<i>Form of supply</i>
8.—(1) Apparatus or equipment used, or constructed or adapted for use, for the purposes of or in association with any such system as is mentioned in paragraph 7 of this Schedule. (2) The installation or maintenance of any such apparatus or equipment.	Supply to persons who are subscribers to a service provided by the Post Office which constitutes or forms part of any such system, in their capacity as subscribers to such a service.

## SCHEDULE 6

Section 19.

### MATTERS FALLING WITHIN SCOPE OF PROPOSALS UNDER SECTION 17

- 1 Prohibition of the specified consumer trade practice either generally or in relation to specified consumer transactions.
- 2 Prohibition of specified consumer transactions unless carried out at specified times or at a place of a specified description.
- 3 Prohibition of the inclusion in specified consumer transactions of terms or conditions purporting to exclude or limit the liability of a party to such a transaction in respect of specified matters.

- 4 A requirement that contracts relating to specified consumer transactions shall include specified terms or conditions.
- 5 A requirement that contracts or other documents relating to specified consumer transactions shall comply with specified provisions as to lettering (whether as to size, type, colouring or otherwise).
- 6 A requirement that specified information shall be given to parties to specified consumer transactions.

## SCHEDULE 7

Sections 50, and 51.

GOODS AND SERVICES (IN ADDITION TO THOSE IN SCHEDULE 5)  
WHOLLY OR PARTLY EXCLUDED FROM SECTION 50

## PART I

## GOODS AND SERVICES WHOLLY EXCLUDED

- 1 Raw cane or beet sugar.
- 2 Sugar beet.
- 3 Hops.
- 4 Water.
- 5 Port facilities (as defined by- section 92(1) of the Transport Act 1962).
- 6 Air navigation services (as defined by section 64(1) of the Civil Aviation Act 1971).
- 7 The carriage of passengers or goods by air.
- 8 The provision by programme contractors of programmes for transmission (whether by way of television or of sound broadcasting) by the Independent Broadcasting Authority.

## PART II

## GOODS AND SERVICES PARTLY EXCLUDED

<i>Description of goods or services</i>	<i>Form of supply excluded</i>
9. Liquid cows' milk.	Supply otherwise than in containers in which milk is put up for purposes of retail sale.
10. Refined sugar.	Supply otherwise than by way of retail sale.
11. Fleece wool.	Supply under a scheme for the time being in force under the Agricultural Marketing Act 1958.
12. Potatoes to which no process of manufacture (other than dressing or dyeing) has been applied.	Supply which is neither— (a) supply by way of retail sale, other than any such supply by the producer of the goods, nor

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<i>Description of goods or services</i>	<i>Form of supply excluded</i>
13. Services supplied at aerodromes (as defined by section 64(1) of the Civil Aviation Act 1971) in connection with the landing, housing, parking or taking off of aircraft or the accommodation of passengers or cargo and their transfer to and from aircraft.	(b) supply to a person purchasing the goods for the purpose of selling them by retail.  Supply at aerodromes which are either— (a) aerodromes owned or managed by the Civil Aviation Authority, or (b) aerodromes in respect of which a licence for public use (as defined by any Order in Council for the time being in force under section 8 of the Civil Aviation Act 1949) 'is for the time being in force.

### PART III

#### GOODS PARTLY EXCLUDED IN RELATION TO NORTHERN IRELAND ONLY

<i>Description of goods</i>	<i>Form of supply excluded</i>
14. Live pigs.	Supply for slaughter.
15. Fresh uncured carcasses or parts of carcasses of pigs.	Supply otherwise than by way of retail sale.

### SCHEDULE 8

Section 56, 73, 74, 77, 89 and 91.

#### POWERS EXERCISABLE BY ORDERS UNDER SECTIONS 56 AND 73

### PART I

#### POWERS EXERCISABLE IN ALL CASES

- 1 Subject to paragraph 3 of this Schedule, an order under section 56 or section 73 of this Act (in this Schedule referred to as an " order ") may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to make or to carry out any such agreement as may be specified or described in the order.
- 2 Subject to the next following paragraph, an order may require any party to any such agreement as may be specified or described in the order to terminate the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.
- 3 (1) An order shall not by virtue of paragraph 1 of this Schedule declare it to be unlawful to make any agreement in so far as, if made, it would be an agreement to which Part I of the Act of 1956 would apply.  
  
(2) An order shall not by virtue of paragraph 1 or paragraph 2 of this Schedule declare it to be unlawful to carry out, or require any person to terminate, an agreement in so far as it is an agreement to which Part I of the Act of 1956 applies.



- (3) An order shall not by virtue of either of those paragraphs declare it to be unlawful to make or to carry out, or require any person to terminate, an agreement in so far as, if made, it would relate, or (as the case may be) in so far as it relates, to the terms and conditions of employment of any workers, or to the physical conditions in which any workers are required to work.
- (4) In this paragraph "terms and conditions of employment" has the meaning assigned to it by section 167(1) of the Industrial Relations Act 1971.
- 4 An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to withhold or to agree to withhold or to threaten to withhold, or to procure others to withhold or to agree to withhold or threaten to withhold, from any such persons as may be specified or described in the order, any supplies or services so specified or described or any orders for such supplies or services (whether the withholding is absolute or is to be effectual only in particular circumstances).
- 5 An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to require, as a condition of the supplying of goods or services to any person,—
- (a) the buying of any goods, or
  - (b) the making of any payment in respect of services other than the goods or services supplied, or
  - (c) the doing of any other such matter as may be specified or described in the order.
- 6 An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order,—
- (a) to discriminate in any manner specified or described in the order between any persons in the prices charged for goods or services so specified or described, or
  - (b) to do anything so specified or described which appears to the appropriate Minister to amount to such discrimination,
- or to procure others to do any of the things mentioned in sub-paragraph (a) or sub-paragraph (b) of this paragraph.
- 7 An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order,—
- (a) to give or agree to give in other ways any such preference in respect of the supply of goods or services, or the giving of orders for goods or services, as may be specified or described in the order, or
  - (b) to do anything so specified or described which appears to the appropriate Minister to amount to giving such preference,
- or to procure others to do any of the things mentioned in sub-paragraph (a) or sub-paragraph (b) of this paragraph.
- 8 An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to charge for goods or services supplied prices differing from those in any published list or notification, or to do anything specified or described in the order which appears to the appropriate Minister to amount to charging such prices.

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- 9           An order may require a person supplying goods or services to publish a list of or otherwise notify prices, with or without such further information as may be specified or described in the order.
- 10       (1) Subject to the following provisions of this paragraph, an order may, to such extent and in such circumstances as may be provided by or under the order, regulate the prices to be charged for any goods or services specified or described in the order.
- (2) An order shall not exercise the power conferred by the preceding sub-paragraph in respect of goods or services of any description unless the matters specified in the relevant report as being those which in the opinion of the Commission operate, or may be expected to operate, against the public interest relate, or include matters relating, to the prices charged for goods or services of that description.
- (3) In this paragraph " the relevant report " in relation to an order, means the report of the Commission in consequence of which the order is made, in the form in which that report is laid before Parliament.
- 11           An order may declare it to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, for any person, by publication or otherwise, to notify, to persons supplying goods or services, prices recommended or suggested as appropriate to be charged by those persons for those goods or services.
- 12       (1) An order may prohibit or restrict the acquisition by any person of the whole or part of the undertaking or assets of another person's business, or the doing of anything which will or may have a result to which this paragraph applies, or may require that, if such an acquisition is made or anything is done which has such a result, the persons concerned or any of them shall thereafter observe any prohibitions or restrictions imposed by or under the order.
- (2) This paragraph applies to any result which consists in two or more bodies corporate becoming interconnected bodies corporate.
- (3) Where an order is made in consequence of a report of the Commission under section 72 of this Act, or is made under section 74 of this Act, this paragraph also applies to any result (other than that specified in sub-paragraph (2) of this paragraph) which, in accordance with section 65 of this Act, consists in two or more enterprises ceasing to be distinct enterprises.
- 13           In this Part of this Schedule "the appropriate Minister", in relation to an order, means the Minister by whom the order is made.

## PART II

### POWERS EXERCISABLE EXCEPT IN CASES FALLING WITHIN SECTION 56(6)

- 14           An order may provide for the division of any business by the sale of any part of the undertaking or assets or otherwise (for which purpose 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), or for the division of any group of interconnected bodies corporate, and for all such matters as may be necessary to effect or take account of the division, including—
- (a) the transfer or vesting of property, rights, liabilities or obligations;

- (b) the adjustment of contracts, whether by discharge or reduction of any liability or obligation or otherwise ;
  - (c) the creation, allotment, surrender or cancellation of any shares, stock or securities ;
  - (d) the formation or winding up of a company or other association, corporate or unincorporate, or the amendment of the memorandum and articles or other instruments regulating any company or association ;
  - (e) the extent to which, and the circumstances in which, provisions of the order affecting a company or association in its share capital, constitution or other matters may be altered by the company or association, and the registration under any enactment of the order by companies or associations so affected;
  - (f) the continuation, with any necessary change of parties, of any legal proceedings.
- 15 In relation to an order under section 73 of this Act, the reference in paragraph 14 of this Schedule to the division of a business as mentioned in that paragraph shall be construed as including a reference 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 otherwise than by reason of their being enterprises of interconnected bodies corporate.

## SCHEDULE 9

Section 91.

## PROCEDURE PRELIMINARY TO LAYING DRAFT OF ORDER TO WHICH SECTION 91(1) APPLIES

- 1 The provisions of this Schedule shall have effect where the Secretary of State proposes to lay before Parliament a draft of any such order as is mentioned in section 91(1) of this Act.
- 2 The Secretary of State shall cause notice of his intention to lay a draft of the order before Parliament to be published in the London Gazette, the Edinburgh Gazette and the Belfast Gazette and in two or more daily newspapers (other than local newspapers), and shall not lay a draft of the order until the end of the period of forty-two days beginning with the day on which the publication of the notice in accordance with this paragraph is completed.
- 3 A notice under this Schedule shall—
- (a) state that it is proposed to lay a draft of the order before Parliament;
  - (b) indicate the nature of the provisions to be embodied in the order;
  - (c) name a place where a copy of the draft will be available to be seen at all reasonable times ; and
  - (d) state that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before the date on which the period mentioned in paragraph 2 of this Schedule is due to expire (specifying that date).
- 4 The Secretary of State shall consider any representation that is duly made with respect to the draft order and is not withdrawn, and, at any time after the date specified in the notice in accordance with sub-paragraph (d) of paragraph 3 of this Schedule, may lay the draft order either—

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- (a) in the form in which it was made available as stated in the notice in compliance with sub-paragraph (c) of that paragraph, or
- (b) in that form subject to such modifications as appear to the Secretary of State to be necessary to ensure that the rights and interests of persons likely to be affected by the provisions of the order are so adjusted as to secure an equitable distribution of any burden imposed by, or any benefit accruing from, any provisions of the order.

SCHEDULE 10

Section 116, 117.

MODIFICATIONS OF ACTS OF 1956 AND 1968 IN RELATION TO SERVICES

**PART I**

MODIFICATIONS OF ACT OF 1956

<i>Section of Act</i>	<i>Modification</i>
Section 10	<p>In subsection (1)(b), for the words " any such restrictions as are described in subsection (1) of section six of this Act " there shall be substituted the words " restrictions, or provision for or in relation to the furnishing of information, in respect of matters specified in the relevant order for the purposes of section 107(1)(b) or section 108(1)(b) of the Act of 1973</p> <p>In subsection (7), for the words " this Part of this Act applies by virtue of subsection (6) of section six of this Act as if it were an agreement made between members of a trade association " there shall be substituted the words " subsection (1) of this section applies by virtue of section 112 of the Act of 1973 as if it were an agreement made between members of an association and for the words " subsection (7) of the said section six" there shall be substituted the words " subsection (3) or subsection (4) of that section "</p> <p>In subsection (8), paragraph (a) shall be omitted, and for the words " section 8(8) of this Act ", in each place where they occur, there shall be substituted the words " section 115(6) of the Act of 1973 ".</p>
Section 11	<p>In subsection (3)(b), the words " of manufacture " shall be omitted.</p>

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<i>Section of Act</i>	<i>Modification</i>
Section 14	<p>In subsection (1), for paragraphs (a) and (b) there shall be substituted the following:</p> <ul style="list-style-type: none"><li>“(a) a person carrying on within the United Kingdom any business of supplying services brought under control by the relevant order, or</li><li>(b) an association which, in relation to the relevant order, is such an association as is mentioned in section 112(1) of the Act of 1973”,</li></ul> <p>and for the words " any such matters as are described in paragraphs (a) to (e) of the said subsection (1) " there shall be substituted the words " matters specified in the relevant order for the purposes of section 107(1)(b) or section 108(1)(b) of the Act of 1973 "</p> <p>In subsection (3), the word " trade " shall be omitted.</p> <p>In subsection (4), paragraph (a) shall be omitted, and for the words " section 8(8) of this Act " there shall be substituted the words " section 115(6) of the Act of 1973 " .</p>
Section 15	<p>In subsection (3A), for the words " a trade association which is not incorporated" there shall be substituted the words " an unincorporated association falling within section 112(1) of the Act of 1973 " .</p>
Section 19	<p>In subsection (1)(b), for the word " prices " there shall be substituted the word " charges " .</p>
Section 20	<p>In subsection (1), for the words " matters described in paragraphs (b) to (d) of subsection (8) of section eight of this Act" there shall be substituted the words " the supply of services outside the United Kingdom or the supply of services to persons or in relation to property (as denned by section 115(9) of the Act of 1973) outside the United Kingdom " .</p> <p>In subsection (3), for the words " any trade association " there shall be substituted the words " any such association as is mentioned in section 112(1) of the Act of 1973 " , for the Words " such a trade association " and for the words " a trade association " there shall be</p>

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<i>Section of Act</i>	<i>Modification</i>
	<p>substituted the words " such an association ", and for the words "the trade association " there shall be substituted the words " the association ".</p> <p>In subsection (4), for the words " subsection (7) of section six of this Act in an agreement for the constitution of a trade association " there shall be substituted the words " subsection (3) or subsection (4) of section 112 of the Act of 1973 in an agreement for the constitution of an association ".</p>

## PART II

### MODIFICATIONS OF ACT OF 1968

Section 1	In subsection (2), for the words " purchasers, consumers or users of any relevant goods " there shall be substituted the words " users of any relevant services
Section 2	In subsection (1), for the words " prices to be charged" there shall be substituted the words " charges to be made " and for the word " prices ", in the second place where it occurs, there shall be substituted the word " charges ".
Section 3	<p>In subsection (1), for the words " a trade association " there shall be substituted the words " an association ", and for the words " subsection (7) of section 6 of the Act of 1956 " and the words in parenthesis immediately after those words there shall be substituted the words " subsection (3) or subsection (4) (as the case may be) of section 112 of the Act of 1973 ".</p> <p>In subsections (2) and (6), for the words " a trade association ", in each place where they occur, there shall be substituted the words " an association ".</p>
Section 6	<p>In subsection (1), after paragraph (f) there shall be inserted the following paragraph:—</p> <p style="padding-left: 40px;">“(j) in the case of an agreement which becomes subject to registration by virtue of an order under section 107 or section 108 of the Act of</p>

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Section 7.

1973 coming into force after the making of the agreement, within three months from the day on which the agreement becomes so subject.”

In subsection (3), for the words " any trade association " there shall be substituted the words " any such association as is mentioned in section 112(1) of the Act of 1973 ", and for the words " a trade association " there shall be substituted the words " an association ".

In subsection (3A), for the words " a trade association " there shall be substituted the words " such an association as is mentioned in section 112(1) of the Act of 1973 ", and for the words " the trade association " there shall be substituted the words " the association ".

In subsection (4), for the words " a trade association " there shall be substituted the words " an association " and for the words " subsection (7) of section 6 of the Act of 1956 " there shall be substituted the words " subsection (3) or subsection (4) of section 112 of the Act of 1973 ".

SCHEDULE 11

Sections 139, 140.

TRANSITIONAL PROVISIONS AND SAVINGS

*General provisions*

- 1 (1) Subject to the following provisions of this Schedule, in so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act, it shall not be invalidated by the repeal but shall have effect as if done under that provision.
- (2) In relation to the Commission (by whichever of the names mentioned in section 4(1) of this Act it was for the time being called) sub-paragraph (1) of this paragraph applies, in particular, to any appointment of a member of the Commission (including any appointment, or extension of the term of service, of a chairman or deputy chairman of the Commission) or of any of the staff of the Commission, any reference made to the Commission, any proceedings or report of the Commission on such a reference, and any order made in consequence of any such report.
- (3) A provision of this Act shall, for the purposes of this Schedule, be regarded as corresponding to an enactment repealed by this Act if (notwithstanding that it differs, whether to a small extent or substantially, from that enactment) it fulfils in this Act a purpose similar to that which that enactment fulfilled in the repealed enactments ;

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and any reference in this Schedule to provisions of the repealed enactments corresponding to any provisions of this Act shall be construed accordingly.

- (4) In this Schedule " the repealed enactments " means the enactments repealed by this Act, and " the commencement of this Act", where that expression occurs in any provision of this Schedule,—
- (a) if the same day is appointed under section 140 of this Act for the repeal of all those enactments, means the day so appointed, or
  - (b) if different days are appointed under that section for the repeal of different enactments, means such day as may be specified for the purposes of this subparagraph in an order made by the Secretary of State by statutory instrument; and different days may be so specified in relation to different provisions of this Schedule.
- 2 For the purposes of the operation of paragraph 1 of this Schedule, anything done by or in relation to the Board of Trade shall be treated as having been done by or in relation to the Secretary of State, whether apart from this paragraph it would fall to be so treated or not
- 3 Without prejudice to any express amendment made by this Act, where an Act (whether passed before, or in the same Session as, this Act) or any document refers, either expressly or by implication, to an enactment repealed by this Act, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to any corresponding provision of this Act.
- 4 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, and there is a corresponding provision in this Act, this Act shall have effect as if that corresponding provision had been in force when that period began to run.
- 5 Without prejudice to paragraph 1 of this Schedule, any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or omitted to be done, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act shall, except where the context otherwise requires, be construed as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any corresponding provisions of the repealed enactments.
- 6 Nothing in this Act shall affect the repealed enactments in their operation in relation to offences committed before the commencement of this Act.

*Reference made to Commission before commencement of Act*

- 7 (1) Any reference made to the Commission under the repealed enactments, and any report of the Commission made before the commencement of this Act on any such reference, shall have effect in accordance with paragraph 1 of this Schedule if made in accordance with such of the repealed enactments as Were applicable to it, and shall so have effect notwithstanding that the reference or report was not made in accordance with the corresponding provisions of this Act.
- (2) In the case of any such reference on which the Commission have not made their report before the commencement of this Act—



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- (a) any proceedings of the Commission on that reference after the commencement of this Act shall be conducted in accordance with the repealed enactments as if they had not been repealed, and
- (b) any report of the Commission on that reference shall be made in accordance with those enactment and not in accordance with any corresponding provisions of this Act;

but nothing in this sub-paragraph shall be construed as excluding the operation of any provisions of this Act relating to any functions of the Director in relation to the Commission, to the transmission to the Director of copies of reports of the Commission, or to any other action authorised or required to be taken in relation to or in consequence of a report made by the Commission.

- (3) In particular, but without prejudice to the generality of the preceding sub-paragraphs, any reference, proceedings or report to which either of those sub-paragraphs applies shall have effect, or shall be conducted or made, as mentioned in that sub-paragraph notwithstanding that the reference or report related or relates to the question whether conditions to which the Act of 1948 applied prevailed or prevail, and not to the existence or possible existence of a monopoly situation within the meaning of this Act.
- (4) For the purposes of the operation of sub-paragraph (2) of this paragraph in relation to a report made by the Commission after the commencement of this Act, section 29(1) of the Act of 1956 (whereby conditions to which the Act of 1948 applied were not to be considered to prevail by reason of any agreement to which Part I of the Act of 1956 applied) shall be construed as if section 6(1) of the Act of 1956 had been originally enacted as amended by section 95 of this Act.

*Report of Commission made before 5th August 1965*

- 8 An order made under section 56 of this Act in consequence of a report made by the Commission before the commencement of the Act of 1965 shall not exercise any of the powers specified in Part II of Schedule 8 to this Act; and accordingly the powers conferred by section 89 of this Act shall not be exercisable in consequence of any such report.

*Undertaking given in consequence of report on reference made under repealed enactments*

- 9 (1) This paragraph applies to any undertaking given to a Minister which is certified by the Secretary of State to have been given in relation to matters dealt with in a report made by the Commission on a reference under section 2 of the Act of 1948 or on a reference under section 6 of the Act of 1965 and which either—
- (a) was given before the commencement of this Act, or
  - (b) is given after the commencement of this Act in a case where no request under subsection (1) of section 88 of this Act has been made to the Director to carry out consultations in accordance with that subsection.
- (2) A copy of any certificate given by the Secretary of State under the preceding sub-paragraph shall be furnished to the Director; and the Minister to whom any such undertaking was or is given shall furnish particulars of it to the Director.
- (3) Subsection (4) of section 88 of this Act shall have effect in relation to any undertaking to which this paragraph applies as if—

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- (a) it were an undertaking of which particulars have been furnished to the Director under subsection (2) of that section, and
  - (b) any reference in subsection (4) of that section to the report of the Director were a reference to a report made by the Commission as mentioned in sub-paragraph (1) of this paragraph.
- (4) The preceding provisions of this paragraph shall have effect without prejudice—
- (a) to the duty of the Commission under section 86 of this Act to transmit to the Director copies of reports which were made by the Commission before the commencement of this Act and which, by virtue of paragraphs 1 and 7 of this Schedule, have effect as if made under this Act, or
  - (b) to any duty of the Director, where requested by the appropriate Minister or Ministers to do so with respect to any such report, to carry out such consultations as are mentioned in section 88(1) of this Act.

*Functions of Director in relation to orders made under Acts of 1948 and 1965*

- 10 Subsection (5) of section 88 of this Act shall have effect in relation to any order which was made under section 10 of the Act of 1948 or under section 3 or section 6 of the Act of 1965 and which, by virtue of paragraph 1 of this Schedule, has effect as if made under this Act, as that subsection has effect in relation to orders made under this Act in the circumstances specified in that subsection.

*Provisions consequential upon transfer of functions from Registrar to Director*

- 11 (1) Except as provided by paragraph 15 of this Schedule, in relation to any time after the commencement of this Act, anything which has before the commencement of this Act been done by or in relation to the Registrar shall have effect as if it had been done by or in relation to the Director.
- (2) Sub-paragraph (1) of this paragraph applies, in particular, to any regulations made by the Registrar, any register kept or document issued by the Registrar, any particulars furnished to the Registrar, and any application to or proceedings before the Restrictive Practices Court, or any other court, tribunal or authority, made or instituted by or against the Registrar or to which the Registrar was otherwise a party ; and any such proceedings, if pending at the commencement of this Act, may accordingly be continued by or against the Director, or with the Director being otherwise treated as a party to them, as the circumstances may require, and for the purpose of so continuing them anything done by or in relation to the Registrar in connection with any such proceedings shall be treated as having been done by or in relation to the Director.
- (3) In this Schedule "the Registrar" means the Registrar of Restrictive Trading Agreements.

*Particulars of export agreements*

- 12 Any particulars furnished to the Board of Trade or to the Secretary of State under section 31(1) of the Act of 1956 shall be treated as if they had been furnished to the Director under section 10 of that Act as amended by sections 94(2) and 102(1) of this Act.

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*Restrictive Trade Practices Act 1968, s. II*

- 13 An agreement which—
- (a) was made before the commencement of this Act by a society at a time when it was approved for the purposes of section 11 of the Act of 1968 (wholesale co-operative societies), and
  - (b) by virtue of that approval was not subject to registration under Part I of the Act of 1956,
- shall, notwithstanding the repeal of that section, not be subject to such registration.

*Pension benefits*

- 14 The repeal by this Act of the following enactments, that is to say, Part II of Schedule 1 to the Act of 1965 and section 3(4)(d) of the Superannuation (Miscellaneous Provisions) Act 1967, shall not affect the operation of those enactments in relation to any person who was appointed to be chairman or deputy chairman of the Commission before the commencement of this Act; and, in relation to any such person, a recommendation made under paragraph 5 of that Schedule shall have effect whether made before or after the commencement of this Act.
- 15 (1) The repeal by this Act of subsections (7) and (8) of section 1 of the Act of 1956 shall not affect the operation of those subsections in relation to any person who was appointed to be the Registrar before the commencement of this Act; and, in relation to any such person, a determination made under subsection (7) of that section shall have effect whether made before or after the commencement of this Act
- (2) Paragraph 11 of this Schedule shall not have effect for the purposes of the operation of subsection (7) or subsection (8) of section 1 of the Act of 1956 in accordance with the preceding sub-paragraph.

*Trade Descriptions Act 1968, s. 30*

- 16 The repeal by this Act of subsections (2) to (4) of section 30 of the Trade Descriptions Act 1968 shall not affect the operation of those subsections in their application to any case where a notice under subsection (2) of that section, or a certificate under subsection (4) of that section or a document purporting to be such a certificate, has been given or issued before the commencement of this Act; and the duty imposed by section 130(1) of this Act shall not apply where such a notice has been so given.

SCHEDULE 12

Section 139.

ENACTMENTS AMENDED

<i>Act</i>	<i>Amendment</i>
The Patents Act 1949 (12, 13 & 14 Geo. 6. c. 87).	In section 43, in subsection (6), for the words " Monopolies and Restrictive Practices Commission " there shall be substituted the words " Monopolies and Mergers Commission ", and for the words " section nine of the Monopolies and Restrictive

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<i>Act</i>	<i>Amendment</i>
<p>The Restrictive Trade Practices Act 1956 (4 &amp; 5 Eliz. 2. c. 68).</p>	<p>Practices (Inquiry and Control) Act 1948" there shall be substituted the words " Part VII of the Fair Trading Act 1973 ".</p> <p>In section 6, in subsection (1), for the words " the two next following sections " there shall be substituted the words " sections 7 and 8 of this Act ".</p> <p>In section 22, after subsection (4) there shall be inserted the following subsection:—</p> <p style="padding-left: 40px;">“(5) The foregoing provisions of this section shall not apply in relation to any order made under section 21A of this Act.”.</p> <p>In section 23, in subsection (2), after the words " this Part of the Act " there shall be inserted the words " or under Part III of the Fair Trading Act 1973 ".</p> <p>In section 30, in subsection (2), for the words " the said section ten" there shall be substituted the words " section 56 of the Fair Trading Act 1973, or having effect as if made under that section ".</p> <p>In section 36, in subsection (1), before the definition of " enactment" there shall be inserted the following:—</p> <p style="padding-left: 40px;">“ the Director ' means the Director General of Fair Trading appointed under the Fair Trading Act 1973.”.</p> <p>In the Schedule, at the beginning of paragraph 7 there shall be inserted the words " Except as provided by section 42 of the Fair Trading Act 1973 "; at the end of paragraph 8 there shall be inserted the words " but this paragraph shall not apply to appeals under section 42 of the Fair Trading Act 1973 "; and in paragraph 10, after the word " Act" there shall be inserted the words " or under Part III of the Fair Trading Act 1973 ".</p>
<p>The Agricultural Marketing Act 1958 (6 &amp; 7 Eliz. 2. c. 47).</p>	<p>In section 47, in the proviso to subsection (2), after paragraph (a) there shall be inserted the following paragraph:—</p> <p style="padding-left: 40px;">“(aa) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any of the staff of that Commission,</p>

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<i>Act</i>	<i>Amendment</i>
	or to the Director General of Fair Trading or any of the staff appointed by that Director General, if it is made for the purpose of enabling the Commission or the Director General to perform any functions of theirs or his under the Fair Trading Act 1973.”.
<a href="#">The Public Records Act 1958 (6 &amp; 7 Eliz. 2. c. 51).</a>	In Schedule 1, in Part II of the Table set out at the end of paragraph 3, for the words "Registrar of Restrictive Trading Agreements" there shall be substituted the words "the Director General of Fair Trading".
<a href="#">The Agricultural Marketing Act (Northern Ireland) 1964 (c. 13).</a>	In section 23, in subsection (2), after paragraph (aa) there shall be inserted the following paragraph:— “(aaa) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any of the staff of that Commission, or to the Director General of Fair Trading or any of the staff appointed by that Director General, if it is made for the purpose of enabling the Commission or the Director General to perform any functions of theirs or his under the Fair Trading Act 1973.”.
<a href="#">The Resale Prices Act 1964 (1964 c. 58).</a>	In section 11(1), after the definition of "dealer" there shall be inserted the following:— “the Director ' means the Director General of Fair Trading.”.
<a href="#">The Iron and Steel Act 1967 (c. 17).</a>	In section 33, in subsection (4), for the words " Registrar of Restrictive Trading Agreements " there shall be substituted the words " Director General of Fair Trading " and, in subsection (5), for the word " Registrar " there shall be substituted the word " Director ".
<a href="#">The Restrictive Trade Practices Act 1968 (1968 c. 66).</a>	In section 6, in subsection (1), after paragraph (g) there shall be inserted the following paragraphs:—

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<i>Act</i>	<i>Amendment</i>
<p data-bbox="240 1480 722 1547">The Pensions (Increase) Act 1971 (1971 c. 56).</p> <p data-bbox="240 1944 775 2011">The European Communities Act 1972 (1972 c. 68).</p>	<p data-bbox="916 389 1348 1070">“(h) in the case of an agreement made before the commencement of the Fair Trading Act 1973 which becomes subject to registration in consequence of section 95 or section 101 of that Act, within three months from the coming into operation of Part IX of that Act;</p> <p data-bbox="938 748 1348 1070">(i) in the case of an agreement which becomes subject to registration by virtue of the expiration or withdrawal of an approval given under section 6A of the Act of 1956, within three months from the day on which the agreement become so subject.”.</p> <p data-bbox="802 1084 1348 1469">In section 12, in subsection (3), for the words " Section 11 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 " there shall be substituted the words " Section 93 of the Fair Trading Act 1973 ", and for the words " under section 10 of that Act " there shall be substituted the words " to which section 90 of that Act applies " and, in subsection (4), for the words " Board of Trade pursuant lo section 31 " there shall be substituted the words " Director pursuant to section 10(8) ".</p> <p data-bbox="802 1482 1348 1928">In Schedule 2, in paragraph 6, for the words from " the Chairman " to the end of the paragraph there shall be substituted the words " widows and children of any chairman or deputy chairman of the Commission which, by virtue of section 4(1) of the Fair Trading Act 1973, is known as the Monopolies and Mergers Commission, or payable out of moneys provided by Parliament in accordance with any recommendation made under paragraph 5 of Schedule 1 to the Monopolies and Mergers Act 19C5 (chairman or deputy chairman of the Commission) ".</p> <p data-bbox="802 1942 1348 2038">In section 10, for the word " Registrar ", in each place where it occurs, there shall be substituted the word " Director " ; and after</p>

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<i>Act</i>	<i>Amendment</i>
<p>The Local Government Act 1972 (1972 c. 70).</p>	<p>subsection (2) there shall be inserted the following subsection:—</p> <p style="padding-left: 40px;">“(2A) In this section 'he Director' means the Director General of Fair Trading.”</p> <p>In section 201, in subsection (6)(a), after the words " Trade Descriptions Acts 1968 and 1972 " there shall be inserted the words " or the Fair Trading Act 1973 ".</p>

### SCHEDULE 13

#### ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
<p>11 &amp; 12 Geo. 6. c. 66.</p>	<p>The Monopolies and Restrictive Practices (Inquiry and Control) Act 1948.</p>	<p>The whole Act.</p>
<p>4 &amp; 5 Eliz. 2. c. 68.</p>	<p>The Restrictive Trade Practices Act 1956.</p>	<p>In section 1, subsection (1), and subsections (3) to (8).</p> <p>In section 11(7), the words " assistant registrar or other ".</p> <p>In section 23, subsection (4).</p> <p>In section 24, subsection (8).</p> <p>Section 29.</p> <p>In section 30, in subsection (3), the words from the beginning of the subsection to the word " and ", and subsections (4), (6) and (7).</p> <p>Section 31.</p> <p>Section 33.</p> <p>In section 35, paragraph (a) of subsection (1).</p> <p>In section 36(1), the definition of " the Registrar ".</p>
<p>5 &amp; 6 Eliz. 2. c. 20.</p>	<p>The House of Commons Disqualification Act 1957.</p>	<p>In Part III of Schedule 1, and in the Part substituted for the said Part III by Schedule 3, the words "</p>

*Status: This is the original version (as it was originally enacted).*

Chapter	Short Title	Extent of Repeal
6 & 7 Eliz. 2. c. 51.	The Public Records Act 1958.	Registrar of Restrictive Trading Agreements ". In Schedule 2, the entries relating to section 17 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and section 33 of the Restrictive Trade Practices Act 1956.
1964 c. 58.	The Resale Prices Act 1964. In section 11(1), the definition of " the Registrar ".	In section 8, subsection (4).
1965 c. 50.	The Monopolies and Mergers Act 1965.	The whole Act.
1967 c. 28.	The Superannuation (Miscellaneous Provisions) Act 1967.	In section 3, paragraph (d) of subsection (4).
1968 c. 29.	The Trade Descriptions Act 1968.	In section 30, subsections (2) to (4).
1968 c. 66.	The Restrictive Trade Practices Act 1968.	Section 11.
1972 c. 68.	The European Communities Act 1972.	In section 10, subsection (3).