



# Electricity Act 1989

## 1989 CHAPTER 29

### PART I

#### ELECTRICITY SUPPLY

##### *Modification of licences*

#### **12 Modification references to Monopolies Commission**

- (1) The Director may make to the Monopolies and Mergers Commission (in this Part referred to as “the Monopolies Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
  - (a) whether any matters which—
    - (i) relate to the generation, transmission or supply of electricity in pursuance of a licence; and
    - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.

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*Status: This is the original version (as it was originally enacted).*

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- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director—
- (a) shall serve a copy of the reference or variation on the holder of the licence; and
  - (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) The Director shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.
- (6) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
    - (i) is requested by the Commission for that purpose; or
    - (ii) 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.
- (7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 3 above.
- (8) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
  - (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to subsection (2) above; and
  - (e) paragraph 16(2) of that Schedule were omitted;
- and in this Part “the 1973 Act” means the Fair Trading Act 1973 and “the 1980 Act” means the Competition Act 1980.
- (9) For the purposes of references under this section the Secretary of State shall appoint not less than eight additional members of the Monopolies Commission; and if any

functions of the Commission in relation to any such reference are performed by a group—

- (a) the chairman of the Commission shall select one, two or three of those additional members to be members of the group; and
- (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced accordingly.