

*Status: Point in time view as at 01/03/2000.*

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## SCHEDULES

### SCHEDULE 1

Sections 3(1)(a) and 19(1)(a).

#### EXCLUSIONS: MERGERS AND CONCENTRATIONS

#### PART I

#### MERGERS

##### *Enterprises ceasing to be distinct: the Chapter I prohibition*

- 1 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) results, or if carried out would result, in any two enterprises ceasing to be distinct enterprises for the purposes of Part V of the <sup>M1</sup>Fair Trading Act 1973 (“the 1973 Act”), the Chapter I prohibition does not apply to the agreement.
- (2) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the merger provisions.
- (3) In sub-paragraph (2) “merger provisions” means the provisions of the agreement which cause, or if carried out would cause, the agreement to have the result mentioned in sub-paragraph (1).
- (4) Section 65 of the 1973 Act applies for the purposes of this paragraph as if—
- (a) in subsection (3) (circumstances in which a person or group of persons may be treated as having control of an enterprise), and
  - (b) in subsection (4) (circumstances in which a person or group of persons may be treated as bringing an enterprise under their control),
- for “may” there were substituted “must”.

#### Marginal Citations

**M1** 1973 c. 41.

##### *Enterprises ceasing to be distinct: the Chapter II prohibition*

- 2 (1) To the extent to which conduct (either on its own or when taken together with other conduct)—
- (a) results in any two enterprises ceasing to be distinct enterprises for the purposes of Part V of the 1973 Act), or
  - (b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),
- the Chapter II prohibition does not apply to that conduct.

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- (2) Section 65 of the 1973 Act applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

*Transfer of a newspaper or of newspaper assets*

- 3 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it constitutes, or would if carried out constitute, a transfer of a newspaper or of newspaper assets for the purposes of section 57 of the 1973 Act.
- (2) The Chapter II prohibition does not apply to conduct (either on its own or when taken together with other conduct) to the extent to which—
- (a) it constitutes such a transfer, or
  - (b) it is directly related and necessary to the implementation of the transfer.
- (3) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the transfer.

*Withdrawal of the paragraph 1 exclusion*

- 4 (1) The exclusion provided by paragraph 1 does not apply to a particular agreement if the Director gives a direction under this paragraph to that effect.
- (2) If the Director is considering whether to give a direction under this paragraph, he may by notice in writing require any party to the agreement in question to give him such information in connection with the agreement as he may require.
- (3) The Director may give a direction under this paragraph only as provided in sub-paragraph (4) or (5).
- (4) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (2), the Director may give a direction under this paragraph.
- (5) The Director may also give a direction under this paragraph if—
- (a) he considers—
    - (i) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
    - (ii) that he is not likely to grant it an unconditional individual exemption; and
  - (b) the agreement is not a protected agreement.
- (6) For the purposes of sub-paragraph (5), an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (7) A direction under this paragraph—
- (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

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

**C1** Sch. 1 para. 4 applied (1.3.2000) by S.I. 2000/310, art. 7

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### *Protected agreements*

- 5 An agreement is a protected agreement for the purposes of paragraph 4 if—
- (a) the Secretary of State has announced his decision not to make a merger reference to the Competition Commission under section 64 of the 1973 Act in connection with the agreement;
  - (b) the Secretary of State has made a merger reference to the Competition Commission under section 64 of the 1973 Act in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger situation qualifying for investigation;
  - (c) the agreement does not fall within sub-paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 65 of the 1973 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
  - (d) the Secretary of State has made a merger reference to the Competition Commission under section 32 of the <sup>M2</sup>Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of the kind to which that section applies.

#### **Marginal Citations**

**M2** 1991 c. 56.

## **PART II**

### CONCENTRATIONS SUBJECT TO EC CONTROLS

- 6 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the Chapter I prohibition does not apply to the agreement if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (2) To the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the Chapter II prohibition does not apply to the conduct if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (3) In this paragraph—
- “concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation; and
- “Merger Regulation” means Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997.

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## SCHEDULE 2

Section 3(1)(b).

### EXCLUSIONS: OTHER COMPETITION SCRUTINY

#### PART I

#### FINANCIAL SERVICES

##### *The Financial Services Act 1986 (c.60)*

- 1 (1) The Financial Services Act 1986 is amended as follows.
- (2) For section 125 (effect of the <sup>M3</sup>Restrictive Trade Practices Act 1976), substitute—
- “125 The Competition Act 1998: Chapter I prohibition.**
- (1) The Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a recognised self-regulating organisation,
  - (b) a recognised investment exchange, or
  - (c) a recognised clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a self-regulating organisation,
  - (b) an investment exchange, or
  - (c) a clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (3) The exclusion provided by subsection (2) above applies only if—
- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
  - (b) the application has not been determined.
- (4) The Chapter I prohibition does not apply to a decision made by—
- (a) a recognised self-regulating organisation,
  - (b) a recognised investment exchange, or
  - (c) a recognised clearing house,
- to the extent to which the decision relates to any of that body’s regulating provisions or specified practices.
- (5) The Chapter I prohibition does not apply to the specified practices of—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
  - (b) a person who is subject to—
    - (i) the rules of one of those bodies, or

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- (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.
- (6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—
  - (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
  - (b) a person who is subject to—
    - (i) the rules of one of those bodies, or
    - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body's regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.
- (7) The Chapter I prohibition does not apply to—
  - (a) any clearing arrangements; or
  - (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (8) If the recognition order in respect of a body of the kind mentioned in subsection (1)(a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.
- (9) In this section—
  - “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
  - “regulating provisions” means—
    - (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
    - (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
    - (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;
  - “specified practices” means—
    - (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));
    - (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));
    - (c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));

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(d) in the case of a person who is subject to the statements of principle, rules, regulations or codes of practice issued or made by a designated agency in the exercise of functions transferred to it by a delegation order, the practices mentioned in section 121(2)(c) above (read with section 121(4));

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

- (3) Omit section 126 (certain practices not to constitute anti-competitive practices for the purposes of the <sup>M4</sup>Competition Act 1980).
- (4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

**“127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter I prohibition.**

- (1) This section applies to—
- (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
  - (b) any other agreement, the parties to which consist of or include—
    - (i) a recognised professional body,
    - (ii) a person certified by such a body, or
    - (iii) a member of such a body,
 and which contains a provision required or contemplated by that body’s investment business rules.
- (2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—
- (a) that the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,
- the Treasury may make a declaration to that effect.
- (3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (4) If the Treasury are satisfied that there has been a material change of circumstances, they may—
- (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or

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- (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
  - (a) notify the Treasury of his intention to do so; and
  - (b) give the Treasury particulars of the agreement and such other information—
    - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
    - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
  - (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or
  - (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—
  - “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
  - “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, andexpressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

**Marginal Citations**

- M3** 1976 c. 34.
- M4** 1980 c. 21.

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## PART II

### COMPANIES

#### *The Companies Act 1989 (c.40)*

- 2 (1) The Companies Act 1989 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the <sup>M5</sup>Restrictive Trade Practices Act 1976), substitute—

#### *“ The Competition Act 1998*

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and
  - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
  - (b) any person mentioned in paragraph 3(5) or (6) above,
- to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
- (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
  - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
- and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

#### **Marginal Citations**

**M5** 1976 c. 34.



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*The Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))*

- 3 (1) The Companies (Northern Ireland) Order 1990 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the Restrictive Trade Practices Act 1976), substitute—

*“ The Competition Act 1998*

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and
  - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
  - (b) any person mentioned in paragraph 3(5) or (6),
- to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b).
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) are to continue to apply for a period of 6 months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
- (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
  - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
- and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

**PART III**

**BROADCASTING**

*The Broadcasting Act 1990 (c.42)*

- 4 (1) The Broadcasting Act 1990 is amended as follows.

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- (2) In section 194A (which modifies the <sup>M6</sup>Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), for subsections (2) to (6), substitute—
- “(2) If, having sought the advice of the Director, it appears to the Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.
- (3) The conditions are that—
- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
    - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
    - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).
- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
- (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
  - (c) make a declaration, even though he has notified the Director of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the Director of his decision.
- (7) The Director may not exercise any Chapter III powers in respect of a relevant agreement, unless—
- (a) he has notified the Secretary of State of his intention to do so; and
  - (b) the Secretary of State—
    - (i) has notified the Director that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
    - (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.

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- (8) If the Director proposes to exercise any Chapter III powers in respect of a relevant agreement, he must give the Secretary of State particulars of the agreement and such other information—
- (a) as he considers will assist the Secretary of State to decide whether to exercise his powers under this section; or
  - (b) as the Secretary of State may request.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
  - “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;
  - “Director” means the Director General of Fair Trading;
  - “regional Channel 3 licence” has the same meaning as in Part I;
- and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

#### **Marginal Citations**

**M6** 1976 c. 34.

#### *Networking arrangements under the Broadcasting Act 1990 (c.42)*

- 5 (1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent to which they—
- (a) are subject to Schedule 4 to the Broadcasting Act 1990 (competition references with respect to networking arrangements); or
  - (b) contain provisions which have been considered under that Schedule.
- (2) The Independent Television Commission (“ITC”) must publish a list of the networking arrangements which in their opinion are excluded from the Chapter I prohibition by virtue of sub-paragraph (1).
- (3) The ITC must—
- (a) consult the Director before publishing the list, and
  - (b) publish the list in such a way as they think most suitable for bringing it to the attention of persons who, in their opinion, would be affected by, or likely to have an interest in, it.
- (4) In this paragraph “networking arrangements” means—
- (a) any arrangements entered into as mentioned in section 39(4) or (7)(b) of the Broadcasting Act 1990, or

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- (b) any agreements—
  - (i) which do not constitute arrangements of the kind mentioned in paragraph (a), but
  - (ii) which are made for the purpose mentioned in section 39(1) of that Act, or
- (c) any modification of the arrangements or agreements mentioned in paragraph (a) or (b).

## PART IV

### ENVIRONMENTAL PROTECTION

#### *Producer responsibility obligations*

- 6 (1) The <sup>M7</sup>Environment Act 1995 is amended as follows.
- (2) In section 94(1) (supplementary provisions about regulations imposing producer responsibility obligations on prescribed persons), after paragraph (o), insert—
- “(oa) the exclusion or modification of any provision of Part I of the Competition Act 1998 in relation to exemption schemes or in relation to any agreement, decision or concerted practice at least one of the parties to which is an operator of an exemption scheme;”.
- (3) After section 94(6), insert—
- “(6A) Expressions used in paragraph (oa) of subsection (1) above which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”
- (4) After section 94, insert—

#### **“94A Producer responsibility: competition matters.**

- (1) For the purposes of this section, the relevant paragraphs are paragraphs (n), (o), (oa) and (ya) of section 94(1) above.
- (2) Regulations made by virtue of any of the relevant paragraphs may include transitional provision in respect of agreements or exemption schemes—
  - (a) in respect of which information has been required for the purposes of competition scrutiny under any regulation made by virtue of paragraph (ya);
  - (b) which are being, or have been, considered for the purposes of competition scrutiny under any regulation made by virtue of paragraph (n) or (ya); or
  - (c) in respect of which provisions of the <sup>M8</sup>Restrictive Trade Practices Acts 1976 and <sup>M9</sup>1977 have been modified or excluded in accordance with any regulation made by virtue of paragraph (o).
- (3) Subsections (2), (3), (5) to (7) and (10) of section 93 above do not apply to a statutory instrument which contains only regulations made by virtue of any of the relevant paragraphs or subsection (2) above.

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- (4) Such a statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Marginal Citations**

- M7** 1995 c. 25.  
**M8** 1976 c. 34.  
**M9** 1977 c. 19.

SCHEDULE 3

Sections 3(1)(c) and 19(1)(b).

GENERAL EXCLUSIONS

*Planning obligations*

- 1 (1) The Chapter I prohibition does not apply to an agreement—
- (a) to the extent to which it is a planning obligation;
  - (b) which is made under section 75 (agreements regulating development or use of land) or 246 (agreements relating to Crown land) of the <sup>M10</sup>Town and Country Planning (Scotland) Act 1997; or
  - (c) which is made under Article 40 of the <sup>M11</sup>Planning (Northern Ireland) Order 1991.
- (2) In sub-paragraph (1)(a), “planning obligation” means—
- (a) a planning obligation for the purposes of section 106 of the <sup>M12</sup>Town and Country Planning Act 1990; or
  - (b) a planning obligation for the purposes of section 299A of that Act.

**Marginal Citations**

- M10** 1997 c. 8.  
**M11** S.I. 1991/1220 (N.I. 11).  
**M12** 1990 c. 8.

*Section 21(2) agreements*

- 2 (1) The Chapter I prohibition does not apply to an agreement in respect of which a direction under section 21(2) of the <sup>M13</sup>Restrictive Trade Practices Act 1976 is in force immediately before the coming into force of section 2 (“a section 21(2) agreement”).
- (2) If a material variation is made to a section 21(2) agreement, sub-paragraph (1) ceases to apply to the agreement on the coming into force of the variation.
- (3) Sub-paragraph (1) does not apply to a particular section 21(2) agreement if the Director gives a direction under this paragraph to that effect.

*Status: Point in time view as at 01/03/2000.*

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- (4) If the Director is considering whether to give a direction under this paragraph, he may by notice in writing require any party to the agreement in question to give him such information in connection with the agreement as he may require.
- (5) The Director may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the Director may give a direction under this paragraph.
- (7) The Director may also give a direction under this paragraph if he considers—
  - (a) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
  - (b) that he is not likely to grant it an unconditional individual exemption.
- (8) For the purposes of sub-paragraph (7) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (9) A direction under this paragraph—
  - (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

**Marginal Citations**

**M13** 1976 c. 34.

*EEA Regulated Markets*

- 3 (1) The Chapter I prohibition does not apply to an agreement for the constitution of an EEA regulated market to the extent to which the agreement relates to any of the rules made, or guidance issued, by that market.
- (2) The Chapter I prohibition does not apply to a decision made by an EEA regulated market, to the extent to which the decision relates to any of the market's regulating provisions.
- (3) The Chapter I prohibition does not apply to—
  - (a) any practices of an EEA regulated market; or
  - (b) any practices which are trading practices in relation to an EEA regulated market.
- (4) The Chapter I prohibition does not apply to an agreement the parties to which are or include—
  - (a) an EEA regulated market, or
  - (b) a person who is subject to the rules of that market,
 to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by the regulating provisions of that market.
- (5) In this paragraph—
 

“EEA regulated market” is a market which—

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*Status: Point in time view as at 01/03/2000.*

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- (a) is listed by an EEA State other than the United Kingdom pursuant to article 16 of Council Directive No. [93/22/EEC](#) of 10th May 1993 on investment services in the securities field; and
- (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which any trading facilities are provided or on any trading floor that the market may have;

“EEA State” means a State which is a contracting party to the EEA Agreement;

“regulating provisions”, in relation to an EEA regulated market, means—

- (a) rules made, or guidance issued, by that market,
- (b) practices of that market, or
- (c) practices which, in relation to that market, are trading practices;

“trading practices”, in relation to an EEA regulated market, means practices of persons who are subject to the rules made by that market, and—

- (a) which relate to business in respect of which those persons are subject to the rules of that market, and which are required or contemplated by those rules or by guidance issued by that market; or
- (b) which are otherwise attributable to the conduct of that market as such.

#### *Services of general economic interest etc.*

- 4 Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

#### *Compliance with legal requirements*

- 5 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.
- (2) The Chapter II prohibition does not apply to conduct to the extent to which it is engaged in an order to comply with a legal requirement.
- (3) In this paragraph “legal requirement” means a requirement—
- (a) imposed by or under any enactment in force in the United Kingdom;
  - (b) imposed by or under the Treaty or the EEA Agreement and having legal effect in the United Kingdom without further enactment; or
  - (c) imposed by or under the law in force in another Member State and having legal effect in the United Kingdom.

#### *Avoidance of conflict with international obligations*

- 6 (1) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter I prohibition not to apply to—
- (a) a particular agreement, or
  - (b) any agreement of a particular description,

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he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.

- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter II prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.
- (6) An international arrangement relating to civil aviation and designated by an order made by the Secretary of State is to be treated as an international obligation for the purposes of this paragraph.
- (7) In this paragraph and paragraph 7 “specified” means specified in the order.

*Public policy*

- 7 (1) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition ought not to apply to—
  - (a) a particular agreement, or
  - (b) any agreement of a particular description,
 he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter II prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.



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### *Coal and steel*

- 8
- (1) The Chapter I prohibition does not apply to an agreement which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
  - (2) Sub-paragraph (1) ceases to have effect on the date on which the ECSC Treaty expires (“the expiry date”).
  - (3) The Chapter II prohibition does not apply to conduct which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
  - (4) Sub-paragraph (3) ceases to have effect on the expiry date.
  - (5) In this paragraph—
    - “coal or steel product” means any product of a kind listed in Annex I to the ECSC Treaty; and
    - “ECSC Treaty” means the Treaty establishing the European Coal and Steel Community.

### *Agricultural products*

- 9
- (1) The Chapter I prohibition does not apply to an agreement to the extent to which it relates to production of or trade in an agricultural product and—
    - (a) forms an integral part of a national market organisation;
    - (b) is necessary for the attainment of the objectives set out in Article 39 of the Treaty; or
    - (c) is an agreement of farmers or farmers’ associations (or associations of such associations) belonging to a single member State which concerns—
      - (i) the production or sale of agricultural products, or
      - (ii) the use of joint facilities for the storage, treatment or processing of agricultural products,and under which there is no obligation to charge identical prices.
  - (2) If the Commission determines that an agreement does not fulfil the conditions specified by the provision for agricultural products for exclusion from Article 85(1), the exclusion provided by this paragraph (“the agriculture exclusion”) is to be treated as ceasing to apply to the agreement on the date of the decision.
  - (3) The agriculture exclusion does not apply to a particular agreement if the Director gives a direction under this paragraph to that effect.
  - (4) If the Director is considering whether to give a direction under this paragraph, he may by notice in writing require any party to the agreement in question to give him such information in connection with the agreement as he may require.
  - (5) The Director may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
  - (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the Director may give a direction under this paragraph.

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- (7) The Director may also give a direction under this paragraph if he considers that an agreement (whether or not he considers that it infringes the Chapter I prohibition) is likely, or is intended, substantially and unjustifiably to prevent, restrict or distort competition in relation to an agricultural product.
- (8) A direction under this paragraph—
- (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).
- (9) In this paragraph—
- “agricultural product” means any product of a kind listed in Annex II to the Treaty; and
- “provision for agricultural products” means Council Regulation (EEC) No. 26/62 of 4th April 1962 applying certain rules of competition to production of and trade in agricultural products.

## SCHEDULE 4

Section 3(1)(d).

### PROFESSIONAL RULES

#### PART I

#### EXCLUSION

##### *General*

- 1 (1) To the extent to which an agreement (either on its own or when taken together with another agreement)—
- (a) constitutes a designated professional rule,
  - (b) imposes obligations arising from designated professional rules, or
  - (c) constitutes an agreement to act in accordance with such rules,
- the Chapter I prohibition does not apply to the agreement.
- (2) In this Schedule—
- “designated” means designated by the Secretary of State under paragraph 2;
- “professional rules” means rules regulating a professional service or the persons providing, or wishing to provide, that service;
- “professional service” means any of the services described in Part II of this Schedule; and
- “rules” includes regulations, codes of practice and statements of principle.

##### *Designated rules*

- 2 (1) The Secretary of State must establish and maintain a list designating, for the purposes of this Schedule, rules—
- (a) which are notified to him under paragraph 3; and

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- (b) which, in his opinion, are professional rules.
- (2) The list is to be established, and any alteration in the list is to be effected, by an order made by the Secretary of State.
- (3) The designation of any rule is to have effect from such date (which may be earlier than the date on which the order listing it is made) as may be specified in that order.

#### *Application for designation*

- 3 (1) Any body regulating a professional service or the persons who provide, or wish to provide, that service may apply to the Secretary of State for rules of that body to be designated.
- (2) An application under this paragraph must—
  - (a) be accompanied by a copy of the rules to which it relates; and
  - (b) be made in the prescribed manner.

#### *Alterations*

- 4 (1) A rule does not cease to be a designated professional rule merely because it is altered.
- (2) If such a rule is altered (whether by being modified, revoked or replaced), the body concerned must notify the Secretary of State and the Director of the alteration as soon as is reasonably practicable.

#### *Reviewing the list*

- 5 (1) The Secretary of State must send to the Director—
  - (a) a copy of any order made under paragraph 2; and
  - (b) a copy of the professional rules to which the order relates.
- (2) The Director must—
  - (a) retain any copy of a professional rule which is sent to him under sub-paragraph (1)(b) so long as the rule remains in force;
  - (b) maintain a copy of the list, as altered from time to time; and
  - (c) keep the list under review.
- (3) If the Director considers—
  - (a) that, with a view to restricting the exclusion provided by this Schedule, some or all of the rules of a particular body should no longer be designated, or
  - (b) that rules which are not designated should be designated,he must advise the Secretary of State accordingly.

#### *Removal from the list*

- 6 (1) This paragraph applies if the Secretary of State receives advice under paragraph 5(3)
  - (a).
- (2) If it appears to the Secretary of State that another Minister of the Crown has functions in relation to the professional service concerned, he must consult that Minister.
- (3) If it appears to the Secretary of State, having considered the Director's advice and the advice of any other Minister resulting from consultation under sub-paragraph (2),

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that the rules in question should no longer be designated, he may by order revoke their designation.

- (4) Revocation of a designation is to have effect from such date as the order revoking it may specify.

### *Inspection*

- 7 (1) Any person may inspect, and take a copy of—
- (a) any entry in the list of designated professional rules as kept by the Director under paragraph 5(2); or
  - (b) any copy of professional rules retained by him under paragraph 5(1).
- (2) The right conferred by sub-paragraph (1) is to be exercised only—
- (a) at a time which is reasonable;
  - (b) on payment of such fee as the Director may determine; and
  - (c) at such offices of his as the Director may direct.

## **PART II**

### PROFESSIONAL SERVICES

#### *Legal*

- 8 The services of barristers, advocates or solicitors.

#### *Medical*

- 9 The provision of medical or surgical advice or attendance and the performance of surgical operations.

#### *Dental*

- 10 Any services falling within the practice of dentistry within the meaning of the <sup>M14</sup>Dentists Act 1984.

#### **Marginal Citations**

**M14** 1984 c. 24.

#### *Ophthalmic*

- 11 The testing of sight.

#### *Veterinary*

- 12 Any services which constitute veterinary surgery within the meaning of the <sup>M15</sup>Veterinary Surgeons Act 1966.

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**Marginal Citations**

**M15** 1966 c. 36.

*Nursing*

13 The services of nurses.

*Midwifery*

14 The services of midwives.

*Physiotherapy*

15 The services of physiotherapists.

*Chiropody*

16 The services of chiropodists.

*Architectural*

17 The services of architects.

*Accounting and auditing*

18 The making or preparation of accounts or accounting records and the examination, verification and auditing of financial statements.

*Insolvency*

19 Insolvency services within the meaning of section 428 of the <sup>M16</sup>Insolvency Act 1986.

**Marginal Citations**

**M16** 1986 c. 45.

*Patent agency*

20 The services of registered patent agents (within the meaning of Part V of the <sup>M17</sup>Copyright, Designs and Patents Act 1988).

**Marginal Citations**

**M17** 1988 c. 48.

21 The services of persons carrying on for gain in the United Kingdom the business of acting as agents or other representatives for or obtaining European patents or for the purpose of conducting proceedings in relation to applications for or otherwise in

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connection with such patents before the European Patent Office or the comptroller and whose names appear on the European list (within the meaning of Part V of the Copyright, Designs and Patents Act 1988).

*Parliamentary agency*

22 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.

*Surveying*

23 The services of surveyors of land, of quantity surveyors, of surveyors of buildings or other structures and of surveyors of ships.

*Engineering and technology etc.*

24 The services 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 mineralogy 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 sub-paragraphs (a) to (e).

*Educational*

25 The provision of education or training.

*Religious*

26 The services of ministers of religion.

SCHEDULE 5

Section 12(2).

NOTIFICATION UNDER CHAPTER I: PROCEDURE

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

**C2** [Sch. 5](#) applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 8](#)

**Commencement Information**

**II** [Sch. 5](#) partly in force; [Sch. 5](#) not in force at Royal Assent, see [s. 431](#); [Sch. 5](#) partly in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

*Terms used*

1 In this Schedule—

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“applicant” means the person making an application to which this Schedule applies;

“application” means an application under section 13 or an application under section 14;

“application for guidance” means an application under section 13;

“application for a decision” means an application under section 14;

“rules” means rules made by the Director under section 51; and

“specified” means specified in the rules.

#### *General rules about applications*

- 2 (1) An application must be made in accordance with rules.
- (2) A party to an agreement who makes an application must take all reasonable steps to notify all other parties to the agreement of whom he is aware—
  - (a) that the application has been made; and
  - (b) as to whether it is for guidance or a decision.
- (3) Notification under sub-paragraph (2) must be in the specified manner.

#### *Preliminary investigation*

- 3 (1) If, after a preliminary investigation of an application, the Director considers that it is likely—
  - (a) that the agreement concerned will infringe the Chapter I prohibition, and
  - (b) that it would not be appropriate to grant the agreement an individual exemption,he may make a decision (“a provisional decision”) under this paragraph.
- (2) If the Director makes a provisional decision—
  - (a) the Director must notify the applicant in writing of his provisional decision; and
  - (b) section 13(4) or (as the case may be) section 14(4) is to be taken as never having applied.
- (3) When making a provisional decision, the Director must follow such procedure as may be specified.
- (4) A provisional decision does not affect the final determination of an application.
- (5) If the Director has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 14.

#### *Procedure on application for guidance*

- 4 When determining an application for guidance, the Director must follow such procedure as may be specified.

#### *Procedure on application for a decision*

- 5 (1) When determining an application for a decision, the Director must follow such procedure as may be specified.

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- (2) The Director must arrange for the application to be published in such a way as he thinks most suitable for bringing it to the attention of those likely to be affected by it, unless he is satisfied that it will be sufficient for him to seek information from one or more particular persons other than the applicant.
- (3) In determining the application, the Director must take into account any representations made to him by persons other than the applicant.

*Publication of decisions*

- 6 If the Director determines an application for a decision he must publish his decision, together with his reasons for making it, in such manner as may be specified.

PROSPECTIVE

*[ Delay by the [OFT]*

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the [OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the [OFT] in determining the application.
- (2) The court may give such directions to the [OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.]

SCHEDULE 6

Section 20(2).

NOTIFICATION UNDER CHAPTER II: PROCEDURE

*Terms used*

- 1 In this Schedule—
  - “applicant” means the person making an application to which this Schedule applies;
  - “application” means an application under section 21 or an application under section 22;
  - “application for guidance” means an application under section 21;
  - “application for a decision” means an application under section 22;
  - “other party”, in relation to conduct of two or more persons, means one of those persons other than the applicant;
  - “rules” means rules made by the Director under section 51; and
  - “specified” means specified in the rules.

*General rules about applications*

- 2 (1) An application must be made in accordance with rules.



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- (2) If the conduct to which an application relates is conduct of two or more persons, the applicant must take all reasonable steps to notify all of the other parties of whom he is aware—
  - (a) that the application has been made; and
  - (b) as to whether it is for guidance or a decision.
- (3) Notification under sub-paragraph (2) must be in the specified manner.

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

C3 Sch. 6 paras. 2-2C amended (1.3.2000) by S.I. 2000/947, art. 6

*Preliminary investigation*

- 3 (1) If, after a preliminary investigation of an application, the Director considers that it is likely that the conduct concerned will infringe the Chapter II prohibition, he may make a decision (“a provisional decision”) under this paragraph.
- (2) If the Director makes a provisional decision, he must notify the applicant in writing of that decision.
- (3) When making a provisional decision, the Director must follow such procedure as may be specified.
- (4) A provisional decision does not affect the final determination of an application.
- (5) If the Director has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 22.

*Procedure on application for guidance*

- 4 When determining an application for guidance, the Director must follow such procedure as may be specified.

*Procedure on application for a decision*

- 5 (1) When determining an application for a decision, the Director must follow such procedure as may be specified.
- (2) The Director must arrange for the application to be published in such a way as he thinks most suitable for bringing it to the attention of those likely to be affected by it, unless he is satisfied that it will be sufficient for him to seek information from one or more particular persons other than the applicant.
- (3) In determining the application, the Director must take into account any representations made to him by persons other than the applicant.

*Publication of decisions*

- 6 If the Director determines an application for a decision he must publish his decision, together with his reasons for making it, in such manner as may be specified.

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PROSPECTIVE

*[ Delay by the <sup>F1</sup>OFT]*

**Textual Amendments**

**F1** Words in Sch. 6 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(53)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the <sup>F1</sup>OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the <sup>F1</sup>OFT] in determining the application.
- (2) The court may give such directions to the <sup>F1</sup>OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.]

SCHEDULE 7

Section 45(7).

THE COMPETITION COMMISSION

**PART I**

GENERAL

*Interpretation*

- 1 In this Schedule—
- “the 1973 Act” means the <sup>M18</sup>Fair Trading Act 1973;
  - “appeal panel member” means a member appointed under paragraph 2(1) (a);
  - “Chairman” means the chairman of the Commission;
  - “the Commission” means the Competition Commission;
  - “Council” has the meaning given in paragraph 5;
  - “general functions” means any functions of the Commission other than functions—
    - (a) in connection with appeals under this Act; or
    - (b) which are to be discharged by the Council;
  - “member” means a member of the Commission;
  - “newspaper merger reference” means a newspaper merger reference under section 59 of the 1973 Act;
  - “President” has the meaning given by paragraph 4(2);
  - “reporting panel member” means a member appointed under paragraph 2(1)(b);

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“secretary” means the secretary of the Commission appointed under paragraph 9; and

“specialist panel member” means a member appointed under any of the provisions mentioned in paragraph 2(1)(d).

#### Marginal Citations

**M18** 1973 c. 41.

#### Membership of the Commission

- 2 (1) The Commission is to consist of—
- (a) members appointed by the Secretary of State to form a panel for the purposes of the Commission’s functions in relation to appeals;
  - (b) members appointed by the Secretary of State to form a panel for the purposes of the Commission’s general functions;
  - (c) members appointed (in accordance with paragraph 15(5)) from the panel maintained under paragraph 22;
  - (d) members appointed by the Secretary of State under or by virtue of—
    - (i) section 12(4) or 14(8) of the <sup>M19</sup>Water Industry Act 1991;
    - (ii) section 12(9) of the <sup>M20</sup>Electricity Act 1989;
    - (iii) section 13(10) of the <sup>M21</sup>Telecommunications Act 1984;
    - (iv) Article 15(9) of the <sup>M22</sup>Electricity (Northern Ireland) Order 1992.
- (2) A person who is appointed as a member of a kind mentioned in one of paragraphs (a) to (c) of sub-paragraph (3) may also be appointed as a member of either or both of the other kinds mentioned in those paragraphs.
- (3) The kinds of member are—
- (a) an appeal panel member;
  - (b) a reporting panel member;
  - (c) a specialist panel member.
- (4) Before appointing a person who is qualified for appointment to the panel of chairmen (see paragraph 26(2)), the Secretary of State must consult the Lord Chancellor or Lord Advocate, as he considers appropriate.
- (5) The validity of the Commission’s proceedings is not affected by a defect in the appointment of a member.

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

- C4** Sch. 7 para. 2: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by S.I. 1999/678, arts. 2, 3, Sch. (with art. 7)
- C5** Sch. 7 para. 2(4) modified (30.6.1999) by S.I. 1999/1748, art. 3, Sch. 1 para. 21  
Sch. 7 para. 2(4): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

*Status: Point in time view as at 01/03/2000.*

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#### Marginal Citations

- M19** 1991 c. 56.  
**M20** 1989 c. 29.  
**M21** 1984 c. 12.  
**M22** S.I. 1992/231 (N.I.1).

#### *Chairman and deputy chairmen*

- 3 (1) The Commission is to have a chairman appointed by the Secretary of State from among the reporting panel members.
- (2) The Secretary of State may appoint one or more of the reporting panel members to act as deputy chairman.
- (3) The Chairman, and any deputy chairman, may resign that office at any time by notice in writing addressed to the Secretary of State.
- (4) If the Chairman (or a deputy chairman) ceases to be a member he also ceases to be Chairman (or a deputy chairman).
- (5) If the Chairman is absent or otherwise unable to act, or there is no chairman, any of his functions may be performed—
- (a) if there is one deputy chairman, by him;
  - (b) if there is more than one—
    - (i) by the deputy chairman designated by the Secretary of State; or
    - (ii) if no such designation has been made, by the deputy chairman designated by the deputy chairmen;
  - (c) if there is no deputy chairman able to act—
    - (i) by the member designated by the Secretary of State; or
    - (ii) if no such designation has been made, by the member designated by the Commission.

#### *President*

- 4 (1) The Secretary of State must appoint one of the appeal panel members to preside over the discharge of the Commission's functions in relation to appeals.
- (2) The member so appointed is to be known as the President of the Competition Commission Appeal Tribunals (but is referred to in this Schedule as "the President").
- (3) The Secretary of State may not appoint a person to be the President unless that person—
- (a) has a ten year general qualification within the meaning of section 71 of the <sup>M23</sup>Courts and Legal Services Act 1990,
  - (b) is an advocate or solicitor in Scotland of at least ten years' standing, or
  - (c) is—
    - (i) a member of the Bar of Northern Ireland of at least ten years' standing, or
    - (ii) a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing,

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and appears to the Secretary of State to have appropriate experience and knowledge of competition law and practice.

- (4) Before appointing the President, the Secretary of State must consult the Lord Chancellor or Lord Advocate, as he considers appropriate.
- (5) If the President ceases to be a member he also ceases to be President.

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

- C6** Sch. 7 para. 4: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by S.I. 1999/678, art. 2, 3, **Sch.** (with art. 7)
- C7** Sch. 7 para. 4(4) modified (30.6.1999) by S.I. 1999/1748, art. 3, **Sch. 1 para. 21**  
Sch. 7 para. 4(4): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

**Marginal Citations**

- M23** 1990 c. 41.

*The Council*

- 5 (1) The Commission is to have a management board to be known as the Competition Commission Council (but referred to in this Schedule as “the Council”).
- (2) The Council is to consist of—
  - (a) the Chairman;
  - (b) the President;
  - (c) such other members as the Secretary of State may appoint; and
  - (d) the secretary.
- (3) In exercising its functions under paragraphs 3 and 7 to 12 and paragraph 5 of Schedule 8, the Commission is to act through the Council.
- (4) The Council may determine its own procedure including, in particular, its quorum.
- (5) The Chairman (and any person acting as Chairman) is to have a casting vote on any question being decided by the Council.

*Term of office*

- 6 (1) Subject to the provisions of this Schedule, each member is to hold and vacate office in accordance with the terms of his appointment.
- (2) A person is not to be appointed as a member for more than five years at a time.
- (3) Any member may at any time resign by notice in writing addressed to the Secretary of State.
- (4) The Secretary of State may remove a member on the ground of incapacity or misbehaviour.
- (5) No person is to be prevented from being appointed as a member merely because he has previously been a member.

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*Expenses, remuneration and pensions*

- 7 (1) The Secretary of State shall pay to the Commission such sums as he considers appropriate to enable it to perform its functions.
- (2) The Commission may pay, or make provision for paying, to or in respect of each member such salaries or other remuneration and such pensions, allowances, fees, expenses or gratuities as the Secretary of State may determine.
- (3) If a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury is required for—
- (a) any payment under sub-paragraph (1);
  - (b) any determination of the Secretary of State under sub-paragraph (2) or (3).

*The Commission's powers*

- 8 Subject to the provisions of this Schedule, the Commission has power to do anything (except borrow money)—
- (a) calculated to facilitate the discharge of its functions; or
  - (b) incidental or conducive to the discharge of its functions.

*Staff*

- 9 (1) The Commission is to have a secretary, appointed by the Secretary of State on such terms and conditions of service as he considers appropriate.
- (2) The approval of the Treasury is required as to those terms and conditions.
- (3) Before appointing a person to be secretary, the Secretary of State must consult the Chairman and the President.
- (4) Subject to obtaining the approval of—
- (a) the Secretary of State, as to numbers, and
  - (b) the Secretary of State and Treasury, as to terms and conditions of service,
- the Commission may appoint such staff as it thinks appropriate.

*Procedure*

- 10 Subject to any provision made by or under this Act, the Commission may regulate its own procedure.

*Application of seal and proof of instruments*

- 11 (1) The application of the seal of the Commission must be authenticated by the signature of the secretary or of some other person authorised for the purpose.
- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.
- (3) A document purporting to be duly executed under the seal of the Commission—
- (a) is to be received in evidence; and

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- (b) is to be taken to have been so executed unless the contrary is proved.

#### *Accounts*

- 12 (1) The Commission must—
- (a) keep proper accounts and proper records in relation to its accounts;
  - (b) prepare a statement of accounts in respect of each of its financial years; and
  - (c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it,
  - (b) the manner in which the information contained in it is to be presented, or
  - (c) the methods and principles according to which the statement is to be prepared,
- and must contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for informing Parliament.
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on each statement received by him as a result of this paragraph; and
  - (b) lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph “financial year” means the period beginning with the date on which the Commission is established and ending with March 31st next, and each successive period of twelve months.

#### *Status*

- 13 (1) The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (2) The Commission’s property is not to be regarded as property of, or held on behalf of, the Crown.

## **PART II**

### PERFORMANCE OF THE COMMISSION’S GENERAL FUNCTIONS

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

- C8** Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1984 c. 12, s. 13(9A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 9(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1986 c. 44, s. 24(7A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 10(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1989 c. 29, s. 12(8A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 12(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

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Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1991 c. 56, s. 14(7A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 13(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1993 c. 43, s. 13(8A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 15(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II applied (with modifications) (1.4.1999) by S.I. 1992/231 (N.I. 1), art. 15(8)(9) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. V para. 17(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II applied (with modifications) (1.4.1999) by S.I. 1996/275 (N.I. 2), art. 15(9) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. V para. 18(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II modified (1.4.1999) by 1980 c. 21, s. 11(9A) (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 4(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II modified (1.4.1999) by 1986 c. 31, s. 44(3A) (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 7(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II modified (1.4.1999) by 1990 c. 42, ss. 67, 77, 121, **Sch. 7 para. 4(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 14(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II modified (1.4.1999) by S.I. 1994/426 (N.I. 1), art. 35(3) (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 20(2)**; S.I. 1999/505, art. 2, **Sch. 2**)

Sch. 7 Pt. II applied (with modifications) (24.11.1999) by S.I. 1999/3088, **regs. 7, 8**

SCh. 7 Pt. II applied (with modifications) (26.3.2001) by 2000 c. 26, s. 20(1)(2)(c); S.I. 2000/2957, art. 2(3), **Sch. 3**

Sch. 7 Pt. II applied (with modifications) (26.3.2001) by 2000 c. 26, s. 20(4)(5)(c); S.I. 2000/2957, art. 2(3), **Sch. 3**

Sch. 7 Pt. II applied (with modifications) (30.11.2000) by 1993 c. 43, **Sch. 4A**, para. 10(2)(b) (as inserted (30.11.2000) by 2000 c. 38, ss. 231, 275(4), **Sch. 24**)

Sch. 7 Pt. II applied (with modifications) (1.10.2001) by 1989 c. 29, s. 14A(13)(d) (as inserted (1.10.2001) by 2000 c. 27, s. 39 (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20))

Sch. 7 Pt. II applied (with modifications) (1.10.2001) by 1989 c. 29, s. 56C(8)(b) (as inserted (1.10.2001) by 2000 c. 27, s. 43 (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20))

Sch. 7 Pt. II applied (with modifications) (1.2.2001) by 2000 c. 38, s. 12(10)(c) (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I**

Sch. 7 Pt. II applied (with modifications) (1.2.2001) by 2000 c. 38, s. 18(2)(e) (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I**

Sch. 7 Pt. II applied (with modifications) (1.10.2001) by Gas Act 1986 c. 44, s. 26A(13)(d) (as inserted (1.10.2001) by 2000 c. 27, s. 83(4) (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20))

SCh. 7 Pt. II applied (with modifications) (1.10.2001) by Gas Act 1986 c. 44, s. 41E (8)(b) (as inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20))

Sch. 7 Pt. II applied (with modifications) (1.10.2001) by 1986 c. 44, s. 26A(12)-(14) (as inserted (1.10.2001) by 2000 c. 27, s. 83(4) (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20))

### *Interpretation*

14 In this Part of this Schedule “group” means a group selected under paragraph 15.

### *Discharge of certain functions by groups*

- 15 (1) Except where sub-paragraph (7) gives the Chairman power to act on his own, any general function of the Commission must be performed through a group selected for the purpose by the Chairman.
- (2) The group must consist of at least three persons one of whom may be the Chairman.



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- (3) In selecting the members of the group, the Chairman must comply with any requirement as to its constitution imposed by any enactment applying to specialist panel members.
- (4) If the functions to be performed through the group relate to a newspaper merger reference, the group must, subject to sub-paragraph (5), consist of such reporting panel members as the Chairman may select.
- (5) The Secretary of State may appoint one, two or three persons from the panel maintained under paragraph 22 to be members and, if he does so, the group—
  - (a) must include that member or those members; and
  - (b) if there are three such members, may (if the Chairman so decides) consist entirely of those members.
- (6) Subject to sub-paragraphs (2) to (5), a group must consist of reporting panel members or specialist panel members selected by the Chairman.
- (7) While a group is being constituted to perform a particular general function of the Commission, the Chairman may—
  - (a) take such steps (falling within that general function) as he considers appropriate to facilitate the work of the group when it has been constituted; or
  - (b) exercise the power conferred by section 75(5) of the 1973 Act (setting aside references).

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

- C9** Sch. 7 para. 15(7) modified (prosp.) by [Financial Services and Markets Act 2000 \(c. 8\)](#), Sch. 14 para. 2B (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 40(20)(b)**)

*Chairmen of groups*

- 16 The Chairman must appoint one of the members of a group to act as the chairman of the group.

*Replacement of member of group*

- 17 (1) If, during the proceedings of a group—
  - (a) a member of the group ceases to be a member of the Commission,
  - (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, or
  - (c) it appears to the Chairman that because of a particular interest of a member of the group it is inappropriate for him to remain in the group,the Chairman may appoint a replacement.
- (2) The Chairman may also at any time appoint any reporting panel member to be an additional member of a group.

*Attendance of other members*

- 18 (1) At the invitation of the chairman of a group, any reporting panel member who is not a member of the group may attend meetings or otherwise take part in the proceedings of the group.

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- (2) But any person attending in response to such an invitation may not—
- (a) vote in any proceedings of the group; or
  - (b) have a statement of his dissent from a conclusion of the group included in a report made by them.
- (3) Nothing in sub-paragraph (1) is to 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.

#### *Procedure*

- 19 (1) Subject to any special or general directions given by the Secretary of State, each group may determine its own procedure.
- (2) Each group may, in particular, determine its quorum and determine—
- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed—
    - (i) to be present or to be heard, either by themselves or by their representatives;
    - (ii) to cross-examine witnesses; or
    - (iii) otherwise to take part; and
  - (b) the extent, if any, to which sittings of the group are to be held in public.
- (3) In determining its procedure a group must have regard to any guidance issued by the Chairman.
- (4) Before issuing any guidance for the purposes of this paragraph the Chairman must consult the members of the Commission.

#### *Effect of exercise of functions by group*

- 20 (1) Subject to sub-paragraph (2), anything done by or in relation to a group in, or in connection with, the performance of functions to be performed by the group is to have the same effect as if done by or in relation to the Commission.
- (2) For the purposes of—
- (a) sections 56 and 73 of the 1973 Act,
  - (b) section 19A of the <sup>M24</sup>Agricultural Marketing Act 1958,
  - (c) Articles 23 and 42 of the <sup>M25</sup>Agricultural Marketing (Northern Ireland) Order 1982,
- a conclusion contained in a report of a group is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group.

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

**C10** Sch. 7 para. 20(2)(a) modified (1.4.1999) by 1980 c. 21, s. 11(9) (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), Sch. 12 para. 4(3)(c) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)

#### **Marginal Citations**

**M24** 1958 c. 47.

**M25** S.I. 1982/1080 (N.I. 12).

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#### *Casting votes*

- 21 The chairman of a group is to have a casting vote on any question to be decided by the group.

#### *Newspaper merger references*

- 22 The Secretary of State must maintain a panel of persons whom he regards as suitable for selection as members of a group constituted in connection with a newspaper merger reference.

### **PART III**

#### **APPEALS**

#### *Interpretation*

- 23 In this Part of this Schedule—  
“panel of chairmen” means the panel appointed under paragraph 26; and  
“tribunal” means an appeal tribunal constituted in accordance with paragraph 27.

#### *Training of appeal panel members*

- 24 The President must arrange such training for appeal panel members as he considers appropriate.

#### *Acting President*

- 25 If the President is absent or otherwise unable to act, the Secretary of State may appoint as acting president an appeal panel member who is qualified to act as chairman of a tribunal.

#### *Panel of tribunal chairmen*

- 26 (1) There is to be a panel of appeal panel members appointed by the Secretary of State for the purposes of providing chairmen of appeal tribunals established under this Part of this Schedule.
- (2) A person is qualified for appointment to the panel of chairmen only if—
- (a) he has a seven year general qualification within the meaning of section 71 of the <sup>M26</sup>Courts and Legal Services Act 1990,
  - (b) he is an advocate or solicitor in Scotland of at least seven years’ standing, or
  - (c) he is—
    - (i) a member of the Bar of Northern Ireland of at least seven years’ standing, or
    - (ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years’ standing,
- and appears to the Secretary of State to have appropriate experience and knowledge of competition law and practice.

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**Marginal Citations**

**M26** 1990 c. 41.

*Constitution of tribunals*

- 27 (1) On receipt of a notice of appeal, the President must constitute an appeal tribunal to deal with the appeal.
- (2) An appeal tribunal is to consist of—
- (a) a chairman, who must be either the President or a person appointed by him to be chairman from the panel of chairmen; and
  - (b) two other appeal panel members appointed by the President.

**PART IV**

MISCELLANEOUS

*Disqualification of members for House of Commons*

- 28 In Part II of Schedule 1 to the <sup>M27</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place— “The Competition Commission”.

**Marginal Citations**

**M27** 1975 c. 24.

*Disqualification of members for Northern Ireland Assembly*

- 29 In Part II of Schedule 1 to the <sup>M28</sup>Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place — “The Competition Commission”.

**Marginal Citations**

**M28** 1975 c. 25.

**PART V**

TRANSITIONAL PROVISIONS

*Interpretation*

- 30 In this Part of this Schedule—
- “commencement date” means the date on which section 45 comes into force; and

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“MMC” means the Monopolies and Mergers Commission.

*Chairman*

- 31 (1) The person who is Chairman of the MMC immediately before the commencement date is on that date to become both a member of the Commission and its chairman as if he had been duly appointed under paragraphs 2(1)(b) and 3.
- (2) He is to hold office as Chairman of the Commission for the remainder of the period for which he was appointed as Chairman of the MMC and on the terms on which he was so appointed.

*Deputy chairmen*

- 32 The persons who are deputy chairmen of the MMC immediately before the commencement date are on that date to become deputy chairmen of the Commission as if they had been duly appointed under paragraph 3(2).

*Reporting panel members*

- 33 (1) The persons who are members of the MMC immediately before the commencement date are on that date to become members of the Commission as if they had been duly appointed under paragraph 2(1)(b).
- (2) Each of them is to hold office as a member for the remainder of the period for which he was appointed as a member of the MMC and on the terms on which he was so appointed.

*Specialist panel members*

- 34 (1) The persons who are members of the MMC immediately before the commencement date by virtue of appointments made under any of the enactments mentioned in paragraph 2(1)(d) are on that date to become members of the Commission as if they had been duly appointed to the Commission under the enactment in question.
- (2) Each of them is to hold office as a member for such period and on such terms as the Secretary of State may determine.

*Secretary*

- 35 The person who is the secretary of the MMC immediately before the commencement date is on that date to become the secretary of the Commission as if duly appointed under paragraph 9, on the same terms and conditions.

*Council*

- 36 (1) The members who become deputy chairmen of the Commission under paragraph 32 are also to become members of the Council as if they had been duly appointed under paragraph 5(2)(c).
- (2) Each of them is to hold office as a member of the Council for such period as the Secretary of State determines.

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## SCHEDULE 8

Sections 46(5) and 48(4).

### APPEALS

#### PART I

#### GENERAL

##### *Interpretation*

- 1        In this Schedule—
- “the chairman” means a person appointed as chairman of a tribunal in accordance with paragraph 27(2)(a) of Schedule 7;
  - “the President” means the President of the Competition Commission Appeal Tribunals appointed under paragraph 4 of Schedule 7;
  - “rules” means rules made by the Secretary of State under section 48;
  - “specified” means specified in rules;
  - “tribunal” means an appeal tribunal constituted in accordance with paragraph 27 of Schedule 7.

##### *General procedure*

- 2        (1) An appeal to the Competition Commission must be made by sending a notice of appeal to the Commission within the specified period.
- (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—
- (a) under which provision of this Act the appeal is brought;
  - (b) to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and
  - (c) to what extent (if any) the appellant is appealing against the Director’s exercise of his discretion in making the disputed decision.
- (3) The tribunal may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.

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

**C11** Sch. 8 para. 2(2) applied (1.3.2000) by S.I. 2000/261, **Rule 6**

##### *Decisions of the tribunal*

- 3        (1) The tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
- (2) The tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—
- (a) remit the matter to the Director,
  - (b) impose or revoke, or vary the amount of, a penalty,

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- (c) grant or cancel an individual exemption or vary any conditions or obligations imposed in relation to the exemption by the Director,
  - (d) give such directions, or take such other steps, as the Director could himself have given or taken, or
  - (e) make any other decision which the Director could himself have made.
- (3) Any decision of the tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision of the Director.
- (4) If the tribunal confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.
- 4 (1) A decision of the tribunal may be taken by a majority.
- (2) The decision must—
- (a) state whether it was unanimous or taken by a majority; and
  - (b) be recorded in a document which—
    - (i) contains a statement of the reasons for the decision; and
    - (ii) is signed and dated by the chairman of the tribunal.
- (3) When the tribunal is preparing the document mentioned in sub-paragraph (2)(b), section 56 is to apply to the tribunal as it applies to the Director.
- (4) The President must make such arrangements for the publication of the tribunal's decision as he considers appropriate.

## PART II

### RULES

#### *Registrar of Appeal Tribunals*

- 5 (1) Rules may provide for the appointment by the Competition Commission, with the approval of the Secretary of State, of a Registrar of Appeal Tribunals.
- (2) The rules may, in particular—
- (a) specify the qualifications for appointment as Registrar; and
  - (b) provide for specified functions relating to appeals to be exercised by the Registrar in specified circumstances.

#### *Notice of appeal*

- 6 Rules may make provision—
- (a) as to the period within which appeals must be brought;
  - (b) as to the form of the notice of appeal and as to the information which must be given in the notice;
  - (c) with respect to amendment of a notice of appeal;
  - (d) with respect to acknowledgement of a notice of appeal.

#### *Response to the appeal*

- 7 Rules may provide for the tribunal to reject an appeal if—

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- (a) it considers that the notice of appeal reveals no valid ground of appeal; or
- (b) it is satisfied that the appellant has habitually and persistently and without any reasonable ground—
  - (i) instituted vexatious proceedings, whether against the same person or against different persons; or
  - (ii) made vexatious applications in any proceedings.

*Pre-hearing reviews and preliminary matters*

- 8 (1) Rules may make provision—
- (a) for the carrying-out by the tribunal of a preliminary consideration of proceedings (a “pre-hearing review”); and
  - (b) for enabling such powers to be exercised in connection with a pre-hearing review as may be specified.
- (2) If rules make provision of the kind mentioned in sub-paragraph (1), they may also include—
- (a) provision for security; and
  - (b) supplemental provision.
- (3) In sub-paragraph (2) “provision for security” means provision authorising a tribunal carrying out a pre-hearing review under the rules, in specified circumstances, to make an order requiring a party to the proceedings, if he wishes to continue to participate in them, to pay a deposit of an amount not exceeding such sum—
- (a) as may be specified; or
  - (b) as may be calculated in accordance with specified provisions.
- (4) In sub-paragraph (2) “supplemental provision” means any provision as to—
- (a) the manner in which the amount of such a deposit is to be determined;
  - (b) the consequences of non-payment of such a deposit; and
  - (c) the circumstances in which any such deposit, or any part of it, may be—
    - (i) refunded to the person who paid it; or
    - (ii) paid to another party to the proceedings.

*Conduct of the hearing*

- 9 (1) Rules may make provision—
- (a) as to the manner in which appeals are to be conducted, including provision for any hearing to be held in private if the tribunal considers it appropriate because it may be considering information of a kind to which section 56 applies;
  - (b) as to the persons entitled to appear on behalf of the parties;
  - (c) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses;
  - (d) as to the evidence which may be required or admitted in proceedings before the tribunal and the extent to which it should be oral or written;
  - (e) allowing the tribunal to fix time limits with respect to any aspect of the proceedings before it and to extend any time limit (whether or not it has expired);



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- (f) for enabling the tribunal to refer a matter back to the Director if it appears to the tribunal that the matter has not been adequately investigated;
  - (g) for enabling the tribunal, on the application of any party to the proceedings before it or on its own initiative—
    - (i) in England and Wales or Northern Ireland, to order the disclosure between, or the production by, the parties of documents or classes of documents;
    - (ii) in Scotland, to order such recovery or inspection of documents as might be ordered by a sheriff;
  - (h) for the appointment of experts for the purposes of any proceedings before the tribunal;
  - (i) for the award of costs or expenses, including any allowances payable to persons in connection with their attendance before the tribunal;
  - (j) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction.
- (2) A person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by virtue of sub-paragraph (1)(c), or
  - (b) any requirement with respect to the disclosure, production, recovery or inspection of documents which is imposed by virtue of sub-paragraph (1)(g),
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Interest*

- 10 (1) Rules may make provision—
- (a) as to the circumstances in which the tribunal may order that interest is payable;
  - (b) for the manner in which and the periods by reference to which interest is to be calculated and paid.
- (2) The rules may, in particular, provide that compound interest is to be payable if the tribunal—
- (a) upholds a decision of the Director to impose a penalty, or
  - (b) does not reduce a penalty so imposed by more than a specified percentage, but in such a case the rules may not provide that interest is to be payable in respect of any period before the date on which the appeal was brought.

#### *Fees*

- 11 (1) Rules may provide—
- (a) for fees to be chargeable in respect of specified costs of proceedings before the tribunal;
  - (b) for the amount of such costs to be determined by the tribunal.
- (2) Any sums received in consequence of rules under this paragraph are to be paid into the Consolidated Fund.

#### *Withdrawing an appeal*

- 12 Rules may make provision—

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- (a) that a party who has brought an appeal may not withdraw it without the leave of—
  - (i) the tribunal, or
  - (ii) in specified circumstances, the President or the Registrar;
- (b) for the tribunal to grant leave to withdraw the appeal on such conditions as it considers appropriate;
- (c) enabling the tribunal to publish any decision which it could have made had the appeal not been withdrawn;
- (d) as to the effect of withdrawal of an appeal;
- (e) as to any procedure to be followed if parties to proceedings on an appeal agree to settle.

#### *Interim orders*

- 13 (1) Rules may provide for the tribunal to make an order (“an interim order”) granting, on an interim basis, any remedy which the tribunal would have power to grant in its final decision.
- (2) An interim order may, in particular, suspend the effect of a decision made by the Director or vary the conditions or obligations attached to an exemption.
- (3) Rules may also make provision giving the tribunal powers similar to those given to the Director by section 35.

#### *Miscellaneous*

- 14 Rules may make provision—
  - (a) for a person who is not a party to proceedings on an appeal to be joined in those proceedings;
  - (b) for appeals to be consolidated on such terms as the tribunal thinks appropriate in such circumstances as may be specified.

## SCHEDULE 9

Section 51(2).

### DIRECTOR’S RULES

#### *General*

- 1 In this Schedule—
  - “application for guidance” means an application for guidance under section 13 or 21;
  - “application for a decision” means an application for a decision under section 14 or 22;
  - “guidance” means guidance given under section 13 or 21;
  - “rules” means rules made by the Director under section 51; and
  - “specified” means specified in rules.

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### *Applications*

- 2 Rules may make provision—
- (a) as to the form and manner in which an application for guidance or an application for a decision must be made;
  - (b) for the procedure to be followed in dealing with the application;
  - (c) for the application to be dealt with in accordance with a timetable;
  - (d) as to the documents and information which must be given to the Director in connection with the application;
  - (e) requiring the applicant to give such notice of the application, to such other persons, as may be specified;
  - (f) as to the consequences of a failure to comply with any rule made by virtue of sub-paragraph (e);
  - (g) as to the procedure to be followed when the application is subject to the concurrent jurisdiction of the Director and a regulator.

### *Provisional decisions*

- 3 Rules may make provision as to the procedure to be followed by the Director when making a provisional decision under paragraph 3 of Schedule 5 or paragraph 3 of Schedule 6.

### *Guidance*

- 4 Rules may make provision as to—
- (a) the form and manner in which guidance is to be given;
  - (b) the procedure to be followed if—
    - (i) the Director takes further action with respect to an agreement after giving guidance that it is not likely to infringe the Chapter I prohibition; or
    - (ii) the Director takes further action with respect to conduct after giving guidance that it is not likely to infringe the Chapter II prohibition.

### *Decisions*

- 5 (1) Rules may make provision as to—
- (a) the form and manner in which notice of any decision is to be given;
  - (b) the person or persons to whom the notice is to be given;
  - (c) the manner in which the Director is to publish a decision;
  - (d) the procedure to be followed if—
    - (i) the Director takes further action with respect to an agreement after having decided that it does not infringe the Chapter I prohibition; or
    - (ii) the Director takes further action with respect to conduct after having decided that it does not infringe the Chapter II prohibition.
- (2) In this paragraph “decision” means a decision of the Director (whether or not made on an application)—
- (a) as to whether or not an agreement has infringed the Chapter I prohibition, or
  - (b) as to whether or not conduct has infringed the Chapter II prohibition,

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and, in the case of an application for a decision under section 14 which includes a request for an individual exemption, includes a decision as to whether or not to grant the exemption.

*Individual exemptions*

- 6 Rules may make provision as to—
- (a) the procedure to be followed by the Director when deciding whether, in accordance with section 5—
    - (i) to cancel an individual exemption that he has granted,
    - (ii) to vary or remove any of its conditions or obligations, or
    - (iii) to impose additional conditions or obligations;
  - (b) the form and manner in which notice of such a decision is to be given.
- 7 Rules may make provision as to—
- (a) the form and manner in which an application under section 4(6) for the extension of an individual exemption is to be made;
  - (b) the circumstances in which the Director will consider such an application;
  - (c) the procedure to be followed by the Director when deciding whether to grant such an application;
  - (d) the form and manner in which notice of such a decision is to be given.

*Block exemptions*

- 8 Rules may make provision as to—
- (a) the form and manner in which notice of an agreement is to be given to the Director under subsection (1) of section 7;
  - (b) the procedure to be followed by the Director if he is acting under subsection (2) of that section;
  - (c) as to the procedure to be followed by the Director if he cancels a block exemption.

*Parallel exemptions*

- 9 Rules may make provision as to—
- (a) the circumstances in which the Director may—
    - (i) impose conditions or obligations in relation to a parallel exemption,
    - (ii) vary or remove any such conditions or obligations,
    - (iii) impose additional conditions or obligations, or
    - (iv) cancel the exemption;
  - (b) as to the procedure to be followed by the Director if he is acting under section 10(5);
  - (c) the form and manner in which notice of a decision to take any of the steps in sub-paragraph (a) is to be given;
  - (d) the circumstances in which an exemption may be cancelled with retrospective effect.

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### *Section 11 exemptions*

- 10 Rules may, with respect to any exemption provided by regulations made under section 11, make provision similar to that made with respect to parallel exemptions by section 10 or by rules under paragraph 9.

### *Directions withdrawing exclusions*

- 11 Rules may make provision as to the factors which the Director may take into account when he is determining the date on which a direction given under paragraph 4(1) of Schedule 1 or paragraph 2(3) or 9(3) of Schedule 3 is to have effect.

### *Disclosure of information*

- 12 (1) Rules may make provision as to the circumstances in which the Director is to be required, before disclosing information given to him by a third party in connection with the exercise of any of the Director's functions under Part I, to give notice, and an opportunity to make representations, to the third party.
- (2) In relation to the agreement (or conduct) concerned, "third party" means a person who is not a party to the agreement (or who has not engaged in the conduct).

### *Applications under section 47*

- 13 Rules may make provision as to—
- (a) the period within which an application under section 47(1) must be made;
  - (b) the procedure to be followed by the Director in dealing with the application;
  - (c) the person or persons to whom notice of the Director's response to the application is to be given.

### *Enforcement*

- 14 Rules may make provision as to the procedure to be followed when the Director takes action under any of sections 32 to 41 with respect to the enforcement of the provisions of this Part.

## SCHEDULE 10

Sections 54 and 66(5).

### REGULATORS

#### PART I

#### MONOPOLIES

- 1 The amendments of the <sup>M29</sup>Fair Trading Act 1973 made by sections 66 and 67 of this Act are to have effect, not only in relation to the jurisdiction of the Director under the provisions amended, but also in relation to the jurisdiction under those provisions of each of the following—
- (a) the Director General of Telecommunications;
  - (b) the Director General of Electricity Supply;

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- (c) the Director General of Electricity Supply for Northern Ireland;
- (d) the Director General of Water Services;
- (e) the Rail Regulator;
- (f) the Director General of Gas Supply; and
- (g) the Director General of Gas for Northern Ireland.

#### Marginal Citations

M29 1973 c. 41.

## PART II

### THE PROHIBITIONS

#### *Telecommunications*

- 2 (1) In consequence of the repeal by this Act of provisions of the <sup>M30</sup>Competition Act 1980, the functions transferred by subsection (3) of section 50 of the <sup>M31</sup>Telecommunications Act 1984 (functions under 1973 and 1980 Acts) are no longer exercisable by the Director General of Telecommunications.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 3 (general duties of Secretary of State and Director), in subsection (3)(b), for “section 50” substitute “ section 50(1) or (2) ”.
- (4) In section 3, after subsection (3A), insert—
- “(3B) Subsections (1) and (2) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 50(3) below (“Competition Act functions”).
- (3C) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by subsection (1) or (2) above (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in relation to any of the matters mentioned in subsection (3) or (3A) above, regard may not be had to any general matter.”
- (5) Section 50 is amended as follows.
- (6) For subsection (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
  - (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with telecommunications.

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(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(7) In subsection (4), omit paragraph (c) and the “and” immediately after it.

(8) In subsection (5), omit “or (3)”.

(9) In subsection (6), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(10) In subsection (7), omit “or the 1980 Act”.

#### Commencement Information

**I2** Sch. 10 para. 2 wholly in force; Sch. 10 para. 2 not in force at Royal Assent see s. 76(3); Sch. 10 para. 2 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 2 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M30** 1980 c. 21.

**M31** 1984 c. 12.

### Gas

3 (1) In consequence of the repeal by this Act of provisions of the <sup>M32</sup>Competition Act 1980, the functions transferred by subsection (3) of section 36A of the <sup>M33</sup>Gas Act 1986 (functions with respect to competition) are no longer exercisable by the Director General of Gas Supply.

(2) Accordingly, that Act is amended as follows.

(3) In section 4 (general duties of Secretary of State and Director), after subsection (3), insert—

“(3A) Subsections (1) to (3) above and section 4A below do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 36A below (“Competition Act functions”).

(3B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (3) above or section 4A below, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(4) Section 36A is amended as follows.

(5) For subsection (3) substitute—

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“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to the carrying on of activities to which this subsection applies.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) In subsection (5)—

- (a) for “transferred by”, in each place, substitute “ mentioned in ”;
- (b) after paragraph (b), insert “ and ”;
- (c) omit paragraph (d) and the “and” immediately before it.

(7) In subsection (6), omit “or (3)”.

(8) In subsection (7), for paragraph (b) substitute—

- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) In subsection (8)—

- (a) omit “or under the 1980 Act”;
- (b) for “or (3) above” substitute “ above and paragraph 1 of Schedule 10 to the Competition Act 1998 ”.

(10) In subsection (9), omit “or the 1980 Act”.

(11) In subsection (10), for the words from “transferred” to the end substitute “ mentioned in subsection (2) or (3) above. ”

#### Commencement Information

**I3** Sch. 10 para. 3 wholly in force; Sch. 10 para. 3 not in force at Royal Assent see s. 76(3); Sch. 10 para. 3 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 3 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M32** 1980 c. 21.

**M33** 1986 c. 44.



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### *Electricity*

- 4 (1) In consequence of the repeal by this Act of provisions of the <sup>M34</sup>Competition Act 1980, the functions transferred by subsection (3) of section 43 of the <sup>M35</sup>Electricity Act 1989 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 3 (general duties of Secretary of State and Director), after subsection (6), insert—
- “(6A) Subsections (1) to (5) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 43(3) below (“Competition Act functions”).
- (6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (5) above (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in the exercise of any function mentioned in subsection (6) above, regard may not be had to any general matter.”
- (4) Section 43 is amended as follows.
- (5) For subsection (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the generation, transmission or supply of electricity.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”
- (6) In subsection (4), omit paragraph (c) and the “and” immediately after it.
- (7) In subsection (5), omit “or (3)”.
- (8) In subsection (6), for paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (9) In subsection (7), omit “or the 1980 Act”.

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#### Commencement Information

- I4** Sch. 10 para. 4 wholly in force; Sch. 10 para. 4 not in force at Royal Assent see s. 76(3); Sch. 10 para. 4 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 4 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

- M34** 1980 c. 21.  
**M35** 1989 c. 29.

### Water

- 5 (1) In consequence of the repeal by this Act of provisions of the <sup>M36</sup>Competition Act 1980, the functions exercisable by virtue of subsection (3) of section 31 of the <sup>M37</sup>Water Industry Act 1991 (functions of Director with respect to competition) are no longer exercisable by the Director General of Water Services.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 2 (general duties with respect to water industry), in subsection (6)(a), at the beginning, insert “ subject to subsection (6A) below ”.
- (4) In section 2, after subsection (6), insert—
- “(6A) Subsections (2) to (4) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).
- (6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (2) to (4) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”
- (5) Section 31 is amended as follows.
- (6) For subsection (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.”
- (7) In subsection (4)—
- (a) for “to (3)” substitute “ and (2) ”;
- (b) omit paragraph (c) and the “and” immediately before it.
- (8) After subsection (4), insert—

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(9) In subsection (5), omit “or in subsection (3) above”.

(10) In subsection (6), omit “or in subsection (3) above”.

(11) In subsection (7), omit “or (3)”.

(12) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(13) In subsection (9), omit “or the 1980 Act”.

#### Commencement Information

**I5** Sch. 10 para. 5 wholly in force; Sch. 10 para. 5 not in force at Royal Assent see s. 76(3); Sch. 10 para. 5 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M36** 1980 c. 21.

**M37** 1991 c. 56.

### Railways

6 (1) In consequence of the repeal by this Act of provisions of the <sup>M38</sup>Competition Act 1980, the functions transferred by subsection (3) of section 67 of the <sup>M39</sup>Railways Act 1993 (respective functions of the Regulator and the Director etc) are no longer exercisable by the Rail Regulator.

(2) Accordingly, that Act is amended as follows.

(3) In section 4 (general duties of the Secretary of State and the Regulator), after subsection (7), insert—

“(7A) Subsections (1) to (6) above do not apply in relation to anything done by the Regulator in the exercise of functions assigned to him by section 67(3) below (“Competition Act functions”).

(7B) The Regulator may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (6) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(4) Section 67 is amended as follows.

(5) For subsection (3) substitute—

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(3) The Regulator shall be entitled to exercise, concurrently with the Director, the functions of the Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to the supply of railway services.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director are to be read as including a reference to the Regulator (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) In subsection (4), omit paragraph (c) and the “and” immediately after it.

(7) In subsection (6)(a), omit “or (3)”.

(8) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) In subsection (9)—

(a) omit “or under the 1980 Act”;

(b) for “or (3) above” substitute “above and paragraph 1 of Schedule 10 to the Competition Act 1998”.

#### Commencement Information

**I6** Sch. 10 para. 6 wholly in force; Sch. 10 para. 6 not in force at Royal Assent see s. 76(3); Sch. 10 para. 6 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 6 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M38** 1980 c. 21.

**M39** 1993 c. 43.

## PART III

### THE PROHIBITIONS: NORTHERN IRELAND

#### *Electricity*

7 (1) In consequence of the repeal by this Act of provisions of the <sup>M40</sup>Competition Act 1980, the functions transferred by paragraph (3) of Article 46 of the <sup>M41</sup>Electricity (Northern Ireland) Order 1992 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply for Northern Ireland.

(2) Accordingly, that Order is amended as follows.

(3) In Article 6 (general duties of the Director), after paragraph (2), add—

*Status: Point in time view as at 01/03/2000.*

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“(3) Paragraph (1) does not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 46(3) (“Competition Act functions”).

(4) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by paragraph (1) (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in the exercise of any function mentioned in Article 4(7) or paragraph (2), regard may not be had to any general matter.”

(4) Article 46 is amended as follows.

(5) For paragraph (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

(6) In paragraph (4), omit sub-paragraph (c) and the “and” immediately after it.

(7) In paragraph (5), omit “or (3)”.

(8) In paragraph (6), for sub-paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) In paragraph (7), omit “or the 1980 Act”.

#### Commencement Information

**I7** Sch. 10 para. 7 wholly in force; Sch. 10 para. 7 not in force at Royal Assent see s. 76(3); Sch. 10 para. 7 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 7 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M40** 1980 c. 21.

**M41** S.I. 1992/231 (N.I. 1).

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Gas

- 8 (1) In consequence of the repeal by this Act of provisions of the <sup>M42</sup>Competition Act 1980, the functions transferred by paragraph (3) of Article 23 of the <sup>M43</sup>Gas (Northern Ireland) Order 1996 (functions with respect to competition) are no longer exercisable by the Director General of Gas for Northern Ireland.
- (2) Accordingly, that Order is amended as follows.
- (3) In Article 5 (general duties of the Department and Director), after paragraph (4), insert—
- “(4A) Paragraphs (2) to (4) do not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 23(3) (“Competition Act functions”).
- (4B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of paragraphs (2) to (4), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”
- (4) Article 23 is amended as follows.
- (5) For paragraph (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act, connected with the conveyance, storage or supply of gas.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”
- (6) In paragraph (4)—
- (a) for “transferred by”, in each place, substitute “ mentioned in ”;
- (b) after sub-paragraph (b), insert “ and ”;
- (c) omit sub-paragraph (d) and the “and” immediately before it.
- (7) In paragraph (5), omit “or (3)”.
- (8) In paragraph (6), for sub-paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (9) In paragraph (7)—
- (a) omit “or under the 1980 Act”;
- (b) for “or (3)” substitute “ and paragraph 1 of Schedule 10 to the Competition Act 1998 ”.

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(10) In paragraph (8), omit “or the 1980 Act”.

(11) In paragraph (9), for the words from “transferred” to the end substitute “ mentioned in paragraph (2) or (3). ”

#### Commencement Information

**I8** Sch. 10 para. 8 wholly in force; Sch. 10 para. 8 not in force at Royal Assent see s. 76(3); Sch. 10 para. 8 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 8 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M42** 1980 c. 21.

**M43** S.I. 1996/275 (N.I. 2).

## PART IV

### UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

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

9 (1) The Telecommunications Act 1984 is amended as follows.

(2) In section 13 (licence modification references to Competition Commission), for subsections (9) and (10) substitute—

“(9) The provisions mentioned in subsection (9A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the <sup>M44</sup>Fair Trading Act 1973 (in this Act referred to as “the 1973 Act”);
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the 1973 Act—
  - (i) references to the Secretary of State were references to the Director, and
  - (ii) the reference to three months were a reference to six months.

(9A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the <sup>M45</sup>Competition Act 1980 (modification of provisions about performance of such functions).

(10) For the purposes of references under this section, the Secretary of State is to appoint not less than three members of the Competition Commission.

*Status: Point in time view as at 01/03/2000.*

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- (10A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (10) to be members of the group.”
- (3) In section 14, omit subsection (2) (which falls with the repeal of the <sup>M46</sup>Restrictive Trade Practices Act 1976).
- (4) In section 16 (securing compliance with licence conditions), in subsection (5), after paragraph (a), omit “or” and after paragraph (b), insert “or  
 (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (5) In section 50 (functions under 1973 and 1980 Acts), after subsection (6), insert—  
 “(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—  
 (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or  
 (b) paragraph 1 of Schedule 2 to the <sup>M47</sup>Deregulation and Contracting Out Act 1994,  
 as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (6) In section 95 (modification by orders under other enactments)—  
 (a) in subsection (1), omit “or section 10(2)(a) of the 1980 Act”;  
 (b) in subsection (2)—  
 (i) after paragraph (a), insert “ or ”;  
 (ii) omit paragraph (c) and the “or” immediately before it;  
 (c) in subsection (3), omit “or the 1980 Act”.
- (7) In section 101(3) (general restrictions on disclosure of information)—  
 (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M48</sup>Resale Prices Act 1976);  
 (b) after paragraph (m), insert—  
 “(n) the Competition Act 1998”.
- (8) At the end of section 101, insert—  
 “(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.”

#### Commencement Information

**19** Sch. 10 para. 9 wholly in force; Sch. 10 para. 9 not in force at Royal Assent see s. 76(3); Sch. 10 para. 9 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 9(7)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 9(1)(2)(5) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 9(3)(4)(6)(7)(a) and (8) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.



*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Marginal Citations

- M44 1973 c. 41.
- M45 1980 c. 21.
- M46 1976 c. 34.
- M47 1994 c. 40.
- M48 1976 c. 53.

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

- 10 (1) The Gas Act 1986 is amended as follows.
- (2) In section 24 (modification references to the Competition Commission), for subsection (7) substitute—
- “(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the <sup>M49</sup>Fair Trading Act 1973;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the <sup>M50</sup>Fair Trading Act 1973—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (7A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the <sup>M51</sup>Competition Act 1980 (modification of provisions about performance of such functions).”
- (3) In section 25, omit subsection (2) (which falls with the repeal of the <sup>M52</sup>Restrictive Trade Practices Act 1976).
- (4) In section 27 (modification by order under other enactments)—
- (a) in subsection (1), omit “or section 10(2)(a) of the <sup>M53</sup>Competition Act 1980”;
  - (b) in subsection (3)(a), omit from “or” to “competition reference”;
  - (c) in subsection (6), omit “or the said Act of 1980”.
- (5) In section 28 (orders for securing compliance with certain provisions), in subsection (5), after paragraph (aa), omit “or” and after paragraph (b), insert “or
- (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 42(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (e) and (f) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M54</sup>Resale Prices Act 1976);
  - (b) after paragraph (n), insert—

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“(o) the Competition Act 1998”.

(7) At the end of section 42, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Commencement Information

**I10** Sch. 10 para. 10 wholly in force; Sch. 10 para. 10 not in force at Royal Assent see s. 76(3); Sch. 10 para. 10 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 10(6)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 10(1)(2) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 10 (3)-(5)(6)(a) and (7) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M49** 1973 c. 41.  
**M50** 1973 c. 41.  
**M51** 1980 c. 21.  
**M52** 1976 c. 34.  
**M53** 1980 c. 21.  
**M54** 1976 c. 53.

#### *The Water Act 1989 (c.15)*

11 In section 174(3) of the Water Act 1989 (general restrictions on disclosure of information)—

- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
- (b) after paragraph (l), insert—  
 “(ll) the Competition Act 1998”.

#### Commencement Information

**I11** Sch. 10 para. 11 wholly in force; Sch. 10 para. 11 not in force at Royal Assent see s. 76(3); Sch. 10 para. 11(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 11(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

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

12 (1) The Electricity Act 1989 is amended as follows.

(2) In section 12 (modification references to Competition Commission), for subsections (8) and (9) substitute—

“(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;

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- (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.”
- (3) In section 13, omit subsection (2) (which falls with the repeal of the <sup>M55</sup>Restrictive Trade Practices Act 1976).
- (4) In section 15 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “ or ”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (3), omit “or the 1980 Act”.
- (5) In section 25 (orders for securing compliance), in subsection (5), after paragraph (b), omit “or” and after paragraph (c), insert “or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 43 (functions with respect to competition), after subsection (6), insert—
- “(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—
- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
  - (b) paragraph 4 of Schedule 2 to the <sup>M56</sup>Deregulation and Contracting Out Act 1994,
- as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (7) In section 57(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the <sup>M57</sup>Restrictive Trade Practices Act 1976 and the <sup>M58</sup>Resale Prices Act 1976);

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- (b) after paragraph (no), insert—  
 “(nop) the Competition Act 1998”.

- (8) At the end of section 57, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Commencement Information

**I12** Sch. 10 para. 12 wholly in force; Sch. 10 para. 12 not in force at Royal Assent see s. 76(3); Sch. 10 para. 12(7)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 12(1)(2)(6) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 12 (3)-(5)(7)(a) and (8) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M55** 1976 c. 34.  
**M56** 1994 c. 40.  
**M57** 1976 c. 34.  
**M58** 1976 c. 53.

#### *The Water Industry Act 1991 (c. 56)*

- 13 (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 12(5) (determinations under conditions of appointment)—
- (a) after “this Act”, insert “ or ”;
  - (b) omit “or the 1980 Act”.
- (3) In section 14 (modification references to Competition Commission), for subsections (7) and (8) substitute—
- “(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition 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 section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (7A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

*Status: Point in time view as at 01/03/2000.*

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- (8) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (8A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select one or more of the members appointed under subsection (8) to be members of the group.”
- (4) In section 15, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (5) In section 17 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “ or ”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (4), omit “or the 1980 Act”.
- (6) In section 19 (exceptions to duty to enforce), after subsection (1), insert—
- “(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 19(3), after “subsection (1) above”, insert “ or, in the case of the Director, is satisfied as mentioned in subsection (1A) above, ”.
- (8) In section 31 (functions of Director with respect to competition), after subsection (8), insert—
- “(8A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—
- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
  - (b) paragraph 8 of Schedule 2 to the <sup>M59</sup>Deregulation and Contracting Out Act 1994,
- as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (9) After section 206(9) (restriction on disclosure of information), insert—
- “(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (9) of this section.”
- (10) In Schedule 15 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the <sup>M60</sup>Restrictive Trade Practices Act 1976 and the <sup>M61</sup>Resale Prices Act 1976;
  - (b) after the entry relating to the <sup>M62</sup>Railways Act 1993, insert the entry— “ The Competition Act 1998 ”.

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I13** Sch. 10 para. 13 wholly in force; Sch. 10 para. 13 not in force at Royal Assent see s. 76(3); Sch. 10 para. 13(10)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 10 para. 13(1)(3)(8) in force at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; Sch. 10 para. 13 (2)(4)-(7)(9) and (10)(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

**M59** 1994 c. 40.  
**M60** 1976 c. 34.  
**M61** 1976 c. 53.  
**M62** 1993 c. 43.

#### *The Water Resources Act 1991 (c.57)*

- 14 In Schedule 24 to the Water Resources Act 1991 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
  - (b) after the entry relating to the <sup>M63</sup>Coal Industry Act 1994, insert the entry—  
 “ The Competition Act 1998 ”.

#### Commencement Information

**I14** Sch. 10 para. 14 wholly in force; Sch. 10 para. 14 not in force at Royal Assent see s. 76(3); Sch. 10 para. 14(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 10 para. 14(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

**M63** 1994 c. 21.

#### *The Railways Act 1993 (c.43)*

- 15 (1) The Railways Act 1993 is amended as follows.
- (2) In section 13 (modification references to the Competition Commission), for subsection (8) substitute—
- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition 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 section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.

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- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the <sup>M64</sup>Competition Act 1980 (in this Part referred to as “the 1980 Act”) (modification of provisions about performance of such functions).”
- (3) In section 14, omit subsection (2) (which falls with the repeal of the <sup>M65</sup>Restrictive Trade Practices Act 1976).
- (4) In section 16 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “ or ”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (5), omit “or the 1980 Act”.
- (5) In section 22, after subsection (6), insert—
- “(6A) Neither the Director General of Fair Trading nor the Regulator may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.
- (6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—
- (a) which is connected with an access agreement; and
  - (b) in respect of which section 35(1)(b) of that Act applies.”
- (6) In section 55 (orders for securing compliance), after subsection (5), insert—
- “(5A) The Regulator shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 55—
- (a) in subsection (6), after “subsection (5)”, insert “ or (5A) ”;
  - (b) in subsection (11), for “subsection (10)” substitute “ subsections (5A) and (10) ”.
- (8) Omit section 131 (modification of Restrictive Trade Practices Act 1976).
- (9) In section 145(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the <sup>M66</sup>Restrictive Trade Practices Act 1976 and the <sup>M67</sup>Resale Prices Act 1976);
  - (b) after paragraph (q), insert—

“(qq) the Competition Act 1998.”
- (10) After section 145(6), insert—

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“(6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Commencement Information

**I15** Sch. 10 para. 15 wholly in force; Sch. 10 para. 15 not in force at Royal Assent see s. 76(3); Sch. 10 para. 15(9)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 15(1)(2) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 15(3)-(8)(9)(a) and (10) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M64** 1980 c. 21.

**M65** 1976 c. 34.

**M66** 1976 c. 34.

**M67** 1976 c. 53.

#### *The Channel Tunnel Rail Link Act 1996 (c.61)*

- 16 (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (6), at the end of the paragraph about regulatory functions, insert “other than any functions assigned to him by virtue of section 67(3) of that Act (“Competition Act functions”).
- (7) The Regulator may, when exercising any Competition Act function, have regard to any matter to which he would have regard if—
- (a) he were under the duty imposed by subsection (1) or (2) above in relation to that function; and
  - (b) the matter is one to which the Director General of Fair Trading could have regard if he were exercising that function.”
- (3) In section 22 (restriction of functions in relation to competition etc.), for subsection (3) substitute—
- “(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the <sup>M68</sup>Railways Act 1993 (by virtue of which he exercises concurrently with the Director General of Fair Trading certain functions under Part I of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—
- (a) any agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act that have been entered into or taken by, or
  - (b) any conduct of the kind mentioned in section 18(1) of that Act that has been engaged in by,
- a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”



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#### Marginal Citations

M68 1993 c. 43.

## PART V

### MINOR AND CONSEQUENTIAL AMENDMENTS: NORTHERN IRELAND

#### *The Electricity (Northern Ireland) Order 1992*

- 17 (1) The <sup>M69</sup>Electricity (Northern Ireland) Order 1992 is amended as follows.
- (2) In Article 15 (modification references to Competition Commission), for paragraphs (8) and (9) substitute—
- “(8) The provisions mentioned in paragraph (8A) are to apply in relation to references under this Article as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) “merger reference” included a reference under this Article;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) The Secretary of State may appoint members of the Competition Commission for the purposes of references under this Article.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under paragraph (9) to be members of the group.”
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the <sup>M70</sup>Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (2)—
    - (i) after sub-paragraph (a), insert “ or ”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (3), omit “or the 1980 Act”.

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- (5) In Article 28 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert “or  
 (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In Article 46 (functions with respect to competition), after paragraph (6), insert—  
 “(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—  
 (a) paragraph (2) and paragraph 1 of Schedule 10 to the Competition Act 1998, or  
 (b) paragraph 5 of Schedule 2 to the <sup>M71</sup>Deregulation and Contracting Out Act 1994,  
 as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (7) In Article 61(3) (general restrictions on disclosure of information)—  
 (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M72</sup>Resale Prices Act 1976);  
 (b) after sub-paragraph (t), add—  
 “(u) the Competition Act 1998”.
- (8) At the end of Article 61, insert—  
 “(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (6).”
- (9) In Schedule 12, omit paragraph 16 (which amends the <sup>M73</sup>Restrictive Trade Practices Act 1976).

#### Commencement Information

**I16** Sch. 10 para. 17 partly in force; Sch. 10 para. 17 not in force at Royal Assent see s. 76(3); Sch. 10 para. 17(7)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 17(1)(2)(6) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 17(3)-(5)(7)(a)(8) and (9) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M69** S.I. 1992/231 (N.I. 1).  
**M70** 1976 c. 34.  
**M71** 1994 c. 40.  
**M72** 1976 c. 53.  
**M73** 1976 c. 34.

#### *The Gas (Northern Ireland) Order 1996*

- 18 (1) The <sup>M74</sup>Gas (Northern Ireland) Order 1996 is amended as follows.

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- (2) In Article 15 (modification references to the Competition Commission), for paragraph (9) substitute—
- “(9) The provisions mentioned in paragraph (9A) are to apply in relation to references under this Article as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) “merger reference” included a reference under this Article;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (9A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).”
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (3)—
    - (i) after sub-paragraph (a), insert “ or ”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (5), omit “or the 1980 Act”.
- (5) In Article 19 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert “or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In Article 44(4) (general restrictions on disclosure of information)—
- (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M75</sup>Resale Prices Act 1976);
  - (b) after sub-paragraph (u), add—
    - “(v) the Competition Act 1998”.
- (7) At the end of Article 44, insert—
- “(8) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (7).”

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#### Commencement Information

**I17** Sch. 10 para. 18 partly in force; Sch. 10 para. 18 not in force at Royal Assent see s. 76(3); Sch. 10 para. 18(6)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 18(1)(2) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 18(3)-(5)(6)(a) and (7) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M74** S.I. 1996/275 (N.I. 2).  
**M75** 1976 c. 53.

## SCHEDULE 11

Section 55(4).

### INTERPRETATION OF SECTION 55

#### *Relevant functions*

- 1 In section 55(3) “relevant functions” means any function under—
- (a) Part I or any enactment repealed in consequence of Part I;
  - (b) the Fair Trading Act 1973 (c. 41) or the Competition Act 1980 (c. 21);
  - (c) the Estate Agents Act 1979 (c. 38);
  - (d) the Telecommunications Act 1984 (c. 12);
  - (e) the Gas Act 1986 (c. 44) or the Gas Act 1995 (c. 45);
  - (f) the <sup>M76</sup>Gas (Northern Ireland) Order 1996;
  - (g) the Airports Act 1986 (c. 31) or Part IV of the <sup>M77</sup>Airports (Northern Ireland) Order 1994;
  - (h) the Financial Services Act 1986 (c. 60);
  - (i) the Electricity Act 1989 (c. 29) or the <sup>M78</sup>Electricity (Northern Ireland) Order 1992;
  - (j) the Broadcasting Act 1990 (c. 42) or the Broadcasting Act 1996 (c. 55);
  - (k) the Courts and Legal Services Act 1990 (c. 41);
  - (l) the Water Industry Act 1991 (c. 56), the Water Resources Act 1991 (c. 57), the Statutory Water Companies Act 1991 (c. 58), the Land Drainage Act 1991 (c. 59) and the Water Consolidation (Consequential Provisions) Act 1991 (c. 60);
  - (m) the Railways Act 1993 (c. 43);
  - (n) the Coal Industry Act 1994 (c. 21);
  - (o) the <sup>M79</sup>EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996;
  - (p) any subordinate legislation made (whether before or after the passing of this Act) for the purpose of implementing Council Directive No. 91/440/EEC of 29th July 1991 on the development of the Community’s railways, Council Directive No. 95/18/EC of 19th June 1995 on the licensing of railway undertakings or Council Directive No. 95/19/EC of 19th June 1995

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on the allocation of railway infrastructure capacity and the charging of infrastructure fees.

**Marginal Citations**

- M76 S.I. 1996/275 (N.I. 2).
- M77 S.I. 1994/426 (N.I. 1).
- M78 S.I. 1992/231 (N.I. 1).
- M79 S.I. 1996/2199.

*Designated persons*

- 2 In section 55(3) “designated person” means any of the following—
- (a) the Director;
  - (b) the Director General of Telecommunications;
  - (c) the Independent Television Commission;
  - (d) the Director General of Gas Supply;
  - (e) the Director General of Gas for Northern Ireland;
  - (f) the Civil Aviation Authority;
  - (g) the Director General of Water Services;
  - (h) the Director General of Electricity Supply;
  - (i) the Director General of Electricity Supply for Northern Ireland;
  - (j) the Rail Regulator;
  - (k) the Director of Passenger Rail Franchising;
  - (l) the International Rail Regulator;
  - (m) the Authorised Conveyancing Practitioners Board;
  - (n) the Scottish Conveyancing and Executry Services Board;
  - (o) the Coal Authority;
  - (p) the Monopolies and Mergers Commission;
  - (q) the Competition Commission;
  - (r) the Securities and Investments Board;
  - (s) any Minister of the Crown or any Northern Ireland department.

SCHEDULE 12

Section 74(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Fair Trading Act 1973 (c.41)*

- 1 (1) The Fair Trading Act 1973 is amended as follows.
- (2) Omit section 4 and Schedule 3 (which make provision in respect of the Monopolies and Mergers Commission).
- (3) Omit—
- (a) section 10(2),

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- (b) section 54(5),
- (c) section 78(3),
- (d) paragraph 3(1) and (2) of Schedule 8,

(which fall with the repeal of the <sup>M80</sup>Restrictive Trade Practices Act 1976).

- (4) In section 10 (supplementary provisions about monopoly situations), in subsection (8), for “to (7)” substitute “ and (3) to (7) ”.
- (5) In sections 35 and 37 to 41, for “the Restrictive Practices Court”, in each place, substitute “ a relevant Court ”.
- (6) After section 41, insert—

**“41A Meaning of “relevant Court”.**

In this Part of this Act, “relevant Court”, in relation to proceedings in respect of a course of conduct maintained in the course of a business, means any of the following courts in whose jurisdiction that business is carried on—

- (a) in England and Wales or Northern Ireland, the High Court;
- (b) in Scotland, the Court of Session.”

- (7) In section 42 (appeals from decisions or orders of courts under Part III)—
  - (a) in subsection (1), at the end, add “ ; but this subsection is subject to subsection (3) of this section ”;
  - (b) in subsection (2)(b), after “Scotland,” insert “ from the sheriff court ”; and
  - (c) after subsection (2), add—
 

“(3) A decision or order of the Court of Session as the relevant Court may be reviewed, whether on a question of fact or on a question of law, by reclaiming to the Inner House.”
- (8) Omit section 45 (power of the Director to require information about complex monopoly situations).
- (9) In section 81 (procedure in carrying out investigations)—
  - (a) in subsection (1)—
    - (i) in the words before paragraph (a), omit from “and the Commission” to “of this Act”;
    - (ii) in paragraph (b), omit “or the Commission, as the case may be,” and “or of the Commission”;
  - (b) in subsection (2), omit “or the Commission” and “or of the Commission”; and
  - (c) in subsection (3), omit from “and, in the case,” to “85 of this Act” and “or the Commission, as the case may be,”.
- (10) In section 85 (attendance of witnesses and production of documents on investigations by Competition Commission of references under the <sup>M81</sup>Fair Trading Act 1973), in subsection (1)(b)—
  - (a) after “purpose”, insert “ (i) ”;
  - (b) after the second “notice”, insert “or

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- (ii) any document which falls within a category of document which is specified, or described, in the notice.”.
- (11) In section 85, in subsection (1)(c), after “estimates” (in both places), insert “ forecasts ”.
- (12) In section 85, after subsection (1), insert—
- “(1A) For the purposes of subsection (1) above—
- (a) “document” includes information recorded in any form;
- (b) the power to require the production of documents includes power to take copies of, or extracts from, any document produced; and
- (c) in relation to information recorded otherwise than in legible form, the power to require it to be produced includes power to require it to be produced in legible form, so far as the means to do so are within the custody or under the control of the person on whom the requirement is imposed.”
- (13) In section 85(2), for “any such investigation” substitute “ an investigation of the kind mentioned in subsection (1) ”.
- (14) In section 133 (general restrictions on disclosure of information), in subsection (2) (a), after “the Coal Industry Act 1994” insert “ or the Competition Act 1998 ”.
- (15) In section 135(1) (financial provisions)—
- (a) in the words before paragraph (a) and in paragraph (b), omit “or the Commission”; and
- (b) omit paragraph (a).

#### Commencement Information

**I18** Sch. 12 para. 1 wholly in force; Sch. 12 para. 1 not in force at Royal Assent see s. 76(3); Sch. 12 para. 1(14) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 12 para. 1(1)(2)(9)-(13)(15) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 12 para. 1(3)(a)(b)(d) in force at 10.11.1999 by S.I. 1999/2859, art. 2; Sch. 12 para. 1(3)(c)(4)-(8) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M80** 1976 c. 34.

**M81** 1973 c. 41.

#### *The Energy Act 1976 (c.76)*

- 2 In the Energy Act 1976, omit section 5 (temporary relief from restrictive practices law in relation to certain agreements connected with petroleum).

#### *The Estate Agents Act 1979 (c.38)*

- 3 In section 10(3) of the Estate Agents Act 1979 (restriction on disclosure of information), in paragraph (a)—
- (a) omit “or the <sup>M82</sup>Restrictive Trade Practices Act 1976”; and

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- (b) after “the<sup>M83</sup> Coal Industry Act 1994”, insert “ or the Competition Act 1998 ”.

**Commencement Information**

**I19** Sch. 12 para. 3 wholly in force; Sch. 12 para. 3 not in force at Royal Assent see s. 76(3); Sch. 12 para. 3(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 12 para. 3(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

**Marginal Citations**

**M82** 1976 c. 34.

**M83** 1994 c. 21.

*The Competition Act 1980 (c.21)*

- 4 (1) The Competition Act 1980 is amended as follows.
- (2) In section 11(8) (public bodies and other persons referred to the Commission), omit paragraph (b) and the “and” immediately before it.
- (3) For section 11(9) (which makes provision for certain functions of the Competition Commission under the<sup>M84</sup> Fair Trading Act 1973 to apply in relation to references under the Competition Act 1980) substitute—
- “(9) The provisions mentioned in subsection (9A) are to apply in relation to a reference under this section as if—
- (a) the functions of the Competition Commission under this section were functions under the Fair Trading Act 1973;
- (b) the expression “merger reference” included a reference to the Commission under this section; and
- (c) in paragraph 20(2)(a) of Schedule 7 to the Competition Act 1998, the reference to section 56 of the Fair Trading Act 1973 were a reference to section 12 below.
- (9A) The provisions are—
- (a) sections 70 (time limit for report on merger), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973; and
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions).”
- (4) In section 13 (investigation of prices directed by Secretary of State)—
- (a) in subsection (1), omit from “but the giving” to the end;
- (b) for subsection (6) substitute—
- “(6) For the purposes of an investigation under this section the Director may, by notice in writing signed by him—
- (a) require any person to produce—
- (i) at a time and a place specified in the notice,
- (ii) to the Director or to any person appointed by him for the purpose,



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- 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
- (b) require any person carrying on any business to—
- (i) furnish to the Director such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (ii) specify the time, manner and form in which any such estimates, forecasts, returns or information are to be furnished.
- (7) No person shall be compelled, for the purpose of any investigation under this section—
- (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session; or
  - (b) 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.
- (8) Subsections (6) to (8) of section 85 of the <sup>M85</sup>Fair Trading Act 1973 (enforcement provisions relating to notices requiring production of documents etc.) shall apply in relation to a notice under subsection (6) above as they apply in relation to a notice under section 85(1) but as if, in section 85(7), for the words from “any one” to “the Commission” there were substituted “the Director.””
- (5) In section 15 (special provisions for agricultural schemes) omit subsections (2)(b), (3) and (4).
- (6) In section 16 (reports), omit subsection (3).
- (7) In section 17 (publication etc. of reports)—
- (a) in subsections (1) and (3) to (5), omit “8(1)”;
  - (b) in subsection (2), omit “8(1) or”; and
  - (c) in subsection (6), for “sections 9, 10 or” substitute “section ”.
- (8) In section 19(3) (restriction on disclosure of information), omit paragraphs (d) and (e).
- (9) In section 19(3), after paragraph (q), insert—
- “(r) the Competition Act 1998”.
- (10) In section 19(5)(a), omit “or in anything published under section 4(2)(a) above”.
- (11) Omit section 22 (which amends the <sup>M86</sup>Fair Trading Act 1973).
- (12) In section 24(1) (modifications of provisions about performance of Commission’s functions), for from “Part II” to the first “Commission” substitute “ Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions) ”.
- (13) Omit sections 25 to 30 (amendments of the <sup>M87</sup>Restrictive Trade Practices Act 1976).

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- (14) In section 31 (orders and regulations)—
- (a) omit subsection (2); and
  - (b) in subsection (3), omit “10”.
- (15) In section 33 (short title etc)—
- (a) in subsection (2), for “sections 2 to 24” substitute “ sections 11 to 13 and sections 15 to 24 ”;
  - (b) omit subsections (3) and (4).

**Commencement Information**

**I20** Sch. 12 para. 4 wholly in force; Sch. 12 para. 4 not in force at Royal Assent see s. 76(3); Sch. 12 para. 4(9)(11) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 12 para. 4(1)(3)(12) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 12 para. 4(2), (4)-(8)(10)(13)-(15) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

**Marginal Citations**

**M84** 1973 c. 41.  
**M85** 1973 c. 41.  
**M86** 1973 c. 41.  
**M87** 1976 c. 34.

*Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))*

- 5 In Schedule 6 to the Magistrates’ Courts (Northern Ireland) Order 1981, omit paragraphs 42 and 43 (which amend the Restrictive Trade Practices Act 1976).

*Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12))*

- 6 In Schedule 8 to the Agricultural Marketing (Northern Ireland) Order 1982—
- (a) omit the entry relating to paragraph 16(2) of Schedule 3 to the <sup>M88</sup>Fair Trading Act 1973; and
  - (b) in the entry relating to the <sup>M89</sup>Competition Act 1980—
    - (i) for “sections” substitute “ section ”;
    - (ii) omit “and 15(3)”.

**Commencement Information**

**I21** Sch. 12 para. 6 wholly in force; Sch. 12 para. 6 not in force at Royal Assent see s. 76(3); Sch. 12 para. 6(a) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 12 para. 6(b) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

**Marginal Citations**

**M88** 1973 c. 41.  
**M89** 1980 c. 21.

*The Airports Act 1986 (c.31)*

- 7 (1) The Airports Act 1986 is amended as follows.

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(2) In section 44 (which makes provision about references by the CAA to the Competition Commission), for subsection (3) substitute—

“(3) The provisions mentioned in subsection (3A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition 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 section 70 of the 1973 Act—
  - (i) references to the Secretary of State were references to the CAA, and
  - (ii) the reference to three months were a reference to six months.

(3A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).”

(3) In section 45, omit subsection (3) (which falls with the repeal of the <sup>M90</sup>Restrictive Trade Practices Act 1976).

(4) In section 54 (orders under the 1973 Act or 1980 Act modifying or revoking conditions)—

- (a) in subsection (1), omit “or section 10(2)(a) of the 1980 Act”;
- (b) in subsection (3), omit paragraph (c) and the “or” immediately before it;
- (c) in subsection (4), omit “or the 1980 Act”.

(5) In section 56 (co-ordination of exercise of functions by CAA and Director General of Fair Trading), in paragraph (a)(ii), omit “or the 1980 Act”.

#### **Commencement Information**

**I22** Sch. 12 para. 7 wholly in force; Sch. 12 para. 7 not in force at Royal Assent see s. 76(3); Sch. 12 para. 7(1)(2) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 12 para. 7(3)-(5) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### **Marginal Citations**

**M90** 1976 c. 34.

#### *The Financial Services Act 1986 (c.60)*

8 In Schedule 11 to the Financial Services Act 1986, in paragraph 12—

- (a) in sub-paragraph (1), omit “126”;
- (b) omit sub-paragraph (2).

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*The Companies Consolidation (Consequential Provisions)  
 (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))*

- 9 In Part II of Schedule 1 to the <sup>M91</sup>Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986, omit the entries relating to the <sup>M92</sup>Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.

**Marginal Citations**

**M91** 1976 c. 34.

**M92** 1976 c. 53.

*The Consumer Protection Act 1987 (c.43)*

- 10 In section 38(3) of the Consumer Protection Act 1987 (restrictions on disclosure of information)—
- (a) omit paragraphs (e) and (f); and
  - (b) after paragraph (o), insert—
    - “(p) the Competition Act 1998.”

**Commencement Information**

**I23** Sch. 12 para. 10 wholly in force; Sch. 12 para. 10 not in force at Royal Assent see s. 76(3); Sch. 12 para. 10(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 12 para. 10(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

*The Channel Tunnel Act 1987 (c.53)*

- 11 In section 33 of the Channel Tunnel Act 1987—
- (a) in subsection (2), omit paragraph (c) and the “and” immediately before it;
  - (b) in subsection (5), omit paragraphs (b) and (c).

*The Road Traffic (Consequential Provisions) Act 1988 (c.54)*

- 12 In Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (consequential amendments), omit paragraph 19.

*The Companies Act 1989 (c.40)*

- 13 In Schedule 20 to the Companies Act 1989 (amendments about mergers and related matters), omit paragraphs 21 to 24.

*The Broadcasting Act 1990 (c.42)*

- 14 (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 193 (modification of networking arrangements in consequence of reports under competition legislation)—
- (a) in subsection (2), omit paragraph (c) and the “and” immediately before it;
  - (b) in subsection (4), omit “or the Competition Act 1980”.

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- (3) In Schedule 4 (which makes provision for references to the Director or the Competition Commission in respect of networking arrangements), in paragraph 4, for sub-paragraph (7) substitute—

“(7) The provisions mentioned in sub-paragraph (7A) are to apply in relation to references under this paragraph as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the <sup>M93</sup>Fair Trading Act 1973;
- (b) the expression “merger reference” included a reference under this paragraph.

(7A) The provisions are—

- (a) section 85 of the Fair Trading Act 1973 (attendance of witnesses and production of documents);
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the <sup>M94</sup>Competition Act 1980 (modification of provisions about performance of such functions).”

#### Commencement Information

**I24** Sch. 12 para. 14 wholly in force; Sch. 12 para. 14 not in force at Royal Assent see s. 76(3); Sch. 12 para. 14(1)(3) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 12 para. 14(2) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M93** 1973 c. 41.

**M94** 1980 c. 21.

#### *The Tribunals and Inquiries Act 1992 (c.53)*

- 15 In Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals), after paragraph 9, insert—

“Competition	9A. An appeal tribunal established under section 48 of the Competition Act 1998.”
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#### *The Osteopaths Act 1993 (c.21)*

- 16 Section 33 of the Osteopaths Act 1993 (competition and anti-competitive practices) is amended as follows—

- (a) in subsection (4), omit paragraph (b) and the “or” immediately before it;
- (b) in subsection (5), omit “or section 10 of the Act of 1980”.

#### *The Chiropractors Act 1994 (c.17)*

- 17 Section 33 of the Chiropractors Act 1994 (competition and anti-competitive practices) is amended as follows—

- (a) in subsection (4), omit paragraph (b) and the “or” immediately before it;

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- (b) in subsection (5), omit “or section 10 of the Act of 1980”.

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

- 18 In section 59(4) of the Coal Industry Act 1994 (information to be kept confidential by the Coal Authority)—
- (a) omit paragraphs (e) and (f); and
  - (b) after paragraph (m), insert—
    - “(n) the Competition Act 1998.”

**Commencement Information**

**I25** Sch. 12 para. 18 wholly in force; Sch. 12 para. 18 not in force at Royal Assent see s. 76(3); Sch. 12 para. 18(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 12 para. 18(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

*The Deregulation and Contracting Out Act 1994 (c.40)*

- 19 (1) The Deregulation and Contracting Out Act 1994 is amended as follows.
- (2) Omit—
- (a) section 10 (restrictive trade practices: non-notifiable agreements); and
  - (b) section 11 (registration of commercially sensitive information).
- (3) In section 12 (anti-competitive practices: competition references), omit subsections (1) to (6).
- (4) In Schedule 4, omit paragraph 1.
- (5) In Schedule 11 (miscellaneous deregulatory provisions: consequential amendments), in paragraph 4, omit sub-paragraphs (3) to (7).

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

- 20 (1) The Airports (Northern Ireland) Order 1994 is amended as follows.
- (2) In Article 35 (which makes provision about references by the CAA to the Competition Commission), for paragraph (3) substitute—
- “(3) The provisions mentioned in paragraph (3A) are to apply in relation to references under Article 34 as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under that Article;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (3A) The provisions are—

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- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).”
- (3) In Article 36, omit paragraph (3) (which falls with the repeal of the <sup>M95</sup>Restrictive Trade Practices Act 1976).
- (4) In Article 45 (orders under the 1973 Act or 1980 Act modifying or revoking conditions)—
- (a) in paragraph (1), omit “or section 10(2)(a) of the 1980 Act”;
  - (b) in paragraph (3), omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (4), omit “or the 1980 Act”.
- (5) In Article 47 (co-ordination of exercise of functions by CAA and Director of Fair Trading), in paragraph (a)(ii), omit “or the 1980 Act”.
- (6) In Schedule 9, omit paragraph 5 (which amends the Restrictive Trade Practices Act 1976).

#### Commencement Information

**I26** Sch. 12 para. 20 wholly in force; Sch. 12 para. 20 not in force at Royal Assent see s. 76(3); Sch. 12 para. 20(1)(2) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 12 para. 20(3)-(6) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M95** 1976 c. 34.

#### *The Broadcasting Act 1996 (c.55)*

- 21 In section 77 of the Broadcasting Act 1996 (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), omit subsection (2).

### SCHEDULE 13

Section 74(2).

#### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

#### GENERAL

#### *Interpretation*

- 1 (1) In this Schedule—

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“RPA” means the <sup>M96</sup>Resale Prices Act 1976;  
 “RTPA” means the Restrictive Trade Practices Act 1976;  
 “continuing proceedings” has the meaning given by paragraph 15;  
 “the Court” means the Restrictive Practices Court;  
 “Director” means the Director General of Fair Trading;  
 “document” includes information recorded in any form;  
 “enactment date” means the date on which this Act is passed;  
 “information” includes estimates and forecasts;  
 “interim period” means the period beginning on the enactment date and ending immediately before the starting date;  
 “prescribed” means prescribed by an order made by the Secretary of State;  
 “regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10;  
 “starting date” means the date on which section 2 comes into force;  
 “transitional period” means the transitional period provided for in Chapters III and IV of Part IV of this Schedule.

- (2) Sections 30, 44, 51, 53, 55, 56, 57 and 59(3) and (4) and paragraph 12 of Schedule 9 (“the applied provisions”) apply for the purposes of this Schedule as they apply for the purposes of Part I of this Act.
- (3) Section 2(5) applies for the purposes of any provisions of this Schedule which are concerned with the operation of the Chapter I prohibition as it applies for the purposes of Part I of this Act.
- (4) In relation to any of the matters in respect of which a regulator may exercise powers as a result of paragraph 35(1), the applied provisions are to have effect as if references to the Director included references to the regulator.
- (5) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because a transitional period is provided by virtue of this Schedule, does not require those provisions of the agreement in respect of which there is a transitional period to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

**Marginal Citations**

**M96** 1976 c. 53.

*General power to make transitional provision and savings*

- 2 (1) Nothing in this Schedule affects the power of the Secretary of State under section 75 to make transitional provisions or savings.
- (2) An order under that section may modify any provision made by this Schedule.

*Advice and information*

- 3 (1) The Director may publish advice and information explaining provisions of this Schedule to persons who are likely to be affected by them.



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- (2) Any advice or information published by the Director under this paragraph is to be published in such form and manner as he considers appropriate.

## PART II

### DURING THE INTERIM PERIOD

#### *Block exemptions*

- 4 (1) The Secretary of State may, at any time during the interim period, make one or more orders for the purpose of providing block exemptions which are effective on the starting date.
- (2) An order under this paragraph has effect as if properly made under section 6.

#### *Certain agreements to be non-notifiable agreements*

- 5 An agreement which—
- (a) is made during the interim period, and
  - (b) satisfies the conditions set out in paragraphs (a), (c) and (d) of section 27A(1) of the RTPA,
- is to be treated as a non-notifiable agreement for the purposes of the RTPA.

#### *Application of RTPA during the interim period*

- 6 In relation to agreements made during the interim period—
- (a) the Director is no longer under the duty to take proceedings imposed by section 1(2)(c) of the RTPA but may continue to do so;
  - (b) section 21 of that Act has effect as if subsections (1) and (2) were omitted; and
  - (c) section 35(1) of that Act has effect as if the words “or within such further time as the Director may, upon application made within that time, allow” were omitted.

#### *Guidance*

- 7 (1) Sub-paragraphs (2) to (4) apply in relation to agreements made during the interim period.
- (2) An application may be made to the Director in anticipation of the coming into force of section 13 in accordance with directions given by the Director and such an application is to have effect on and after the starting date as if properly made under section 13.
- (3) The Director may, in response to such an application—
- (a) give guidance in anticipation of the coming into force of section 2; or
  - (b) on and after the starting date, give guidance under section 15 as if the application had been properly made under section 13.
- (4) Any guidance so given is to have effect on and after the starting date as if properly given under section 15.

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### PART III

#### ON THE STARTING DATE

##### *Applications which fall*

- 8 (1) Proceedings in respect of an application which is made to the Court under any of the provisions mentioned in sub-paragraph (2), but which is not determined before the starting date, cease on that date.
- (2) The provisions are—
- (a) sections 2(2), 35(3), 37(1) and 40(1) of the RTPA and paragraph 5 of Schedule 4 to that Act;
  - (b) section 4(1) of the RTPA so far as the application relates to an order under section 2(2) of that Act; and
  - (c) section 25(2) of the RPA.
- (3) The power of the Court to make an order for costs in relation to any proceedings is not affected by anything in this paragraph or by the repeals made by section 1.

##### *Orders and approvals which fall*

- 9 (1) An order in force immediately before the starting date under—
- (a) section 2(2), 29(1), 30(1), 33(4), 35(3) or 37(1) of the RTPA; or
  - (b) section 25(2) of the RPA,
- ceases to have effect on that date.
- (2) An approval in force immediately before the starting date under section 32 of the RTPA ceases to have effect on that date.

### PART IV

#### ON AND AFTER THE STARTING DATE

### CHAPTER I

#### GENERAL

##### *Duty of Director to maintain register etc.*

- 10 (1) This paragraph applies even though the relevant provisions of the RTPA are repealed by this Act.
- (2) The Director is to continue on and after the starting date to be under the duty imposed by section 1(2)(a) of the RTPA to maintain a register in respect of agreements—
- (a) particulars of which are, on the starting date, entered or filed on the register;
  - (b) which fall within sub-paragraph (4);
  - (c) which immediately before the starting date are the subject of proceedings under the RTPA which do not cease on that date by virtue of this Schedule; or

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- (d) in relation to which a court gives directions to the Director after the starting date in the course of proceedings in which a question arises as to whether an agreement was, before that date—
  - (i) one to which the RTPA applied;
  - (ii) subject to registration under that Act;
  - (iii) a non-notifiable agreement for the purposes of that Act.
- (3) The Director is to continue on and after the starting date to be under the duties imposed by section 1(2)(a) and (b) of the RTPA of compiling a register of agreements and entering or filing certain particulars in the register, but only in respect of agreements of a kind referred to in paragraph (b), (c) or (d) of sub-paragraph (2).
- (4) An agreement falls within this sub-paragraph if—
  - (a) it is subject to registration under the RTPA but—
    - (i) is not a non-notifiable agreement within the meaning of section 27A of the RTPA, or
    - (ii) is not one to which paragraph 5 applies;
  - (b) particulars of the agreement have been provided to the Director before the starting date; and
  - (c) as at the starting date no entry or filing has been made in the register in respect of the agreement.
- (5) Sections 23 and 27 of the RTPA are to apply after the starting date in respect of the register subject to such modifications, if any, as may be prescribed.
- (6) In sub-paragraph (2)(d) “court” means—
  - (a) the High Court;
  - (b) the Court of Appeal;
  - (c) the Court of Session;
  - (d) the High Court or Court of Appeal in Northern Ireland; or
  - (e) the House of Lords.

#### **Commencement Information**

**I27** [Sch. 13 para. 10](#) wholly in force; [Sch. 13 para. 10](#) not in force at Royal Assent see [s. 76\(3\)](#); [Sch. 13 para. 10\(5\)](#) in force at 11.1.1999 by [S.I. 1998/3166, art. 2](#), [Sch. 13 para. 10\(1\)-\(4\)](#) and (6) fully in force at 1.3.2000 by [S.I. 2000/344, art. 2](#), [Sch.](#)

#### *RTPA section 3 applications*

- 11 (1) Even though section 3 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed—
  - (a) in relation to a continuing application under that section; or
  - (b) so as to allow an application to be made under that section on or after the starting date in respect of a continuing application under section 1(3) of the RTPA.
- (2) “Continuing application” means an application made, but not determined, before the starting date.

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I28** Sch. 13 para. 11 partly in force; Sch. 13 para. 11 not in force at Royal Assent see s. 76(3); Sch. 13 para. 11 in force for certain purposes at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.

#### *RTPA section 26 applications*

- 12 (1) Even though section 26 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed, in relation to an application which is made under that section, but not determined, before the starting date.
- (2) If an application under section 26 is determined on or after the starting date, this Schedule has effect in relation to the agreement concerned as if the application had been determined immediately before that date.

#### Commencement Information

**I29** Sch. 13 para. 12 wholly in force; Sch. 13 para. 12 not in force at Royal Assent see s. 76(3); Sch. 13 para. 12(1) in force for certain purposes at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 13 para. 12(1) and (2) fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### *Right to bring civil proceedings*

- 13 (1) Even though section 35 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of section 27ZA or 35(2) of that Act to bring civil proceedings in respect of an agreement (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).
- (2) Even though section 25 of the RPA is repealed by this Act, the provisions of that section (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of subsection (3) of that section to bring civil proceedings (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

## CHAPTER II

### CONTINUING PROCEEDINGS

#### *The general rule*

- 14 (1) The Chapter I prohibition does not apply to an agreement at any time when the agreement is the subject of continuing proceedings under the RTPA.
- (2) The Chapter I prohibition does not apply to an agreement relating to goods which are the subject of continuing proceedings under section 16 or 17 of the RPA to the extent to which the agreement consists of exempt provisions.

*Status: Point in time view as at 01/03/2000.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) In sub-paragraph (2) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
  - (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.
- (4) If the Chapter I prohibition does not apply to an agreement because of this paragraph, the provisions of, or made under, the RTPA or the RPA are to continue to have effect in relation to the agreement.
- (5) The repeals made by section 1 do not affect—
  - (a) continuing proceedings; or
  - (b) proceedings of the kind referred to in paragraph 11 or 12 of this Schedule which are continuing after the starting date.

*Meaning of “continuing proceedings”*

- 15 (1) For the purposes of this Schedule “continuing proceedings” means proceedings in respect of an application made to the Court under the RTPA or the RPA, but not determined, before the starting date.
- (2) But proceedings under section 3 or 26 of the RTPA to which paragraph 11 or 12 applies are not continuing proceedings.
- (3) The question whether (for the purposes of Part III, or this Part, of this Schedule) an application has been determined is to be decided in accordance with sub-paragraphs (4) and (5).
- (4) If an appeal against the decision on the application is brought, the application is not determined until—
  - (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (5) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

*RTPA section 4 proceedings*

- 16 Proceedings on an application for an order under section 4 of the RTPA are also continuing proceedings if—
  - (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under that section is granted before the starting date but the application itself is not made before that date.

*Status: Point in time view as at 01/03/2000.*

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*RPA section 16 or 17 proceedings*

- 17 Proceedings on an application for an order under section 16 or 17 of the RPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under section 16 or 17 of the RPA is granted before the starting date, but the application itself is not made before that date.

*Continuing proceedings which are discontinued*

- 18 (1) On an application made jointly to the Court by all the parties to any continuing proceedings, the Court must, if it is satisfied that the parties wish it to do so, discontinue the proceedings.
- (2) If, on an application under sub-paragraph (1) or for any other reason, the Court orders the proceedings to be discontinued, this Schedule has effect (subject to paragraphs 21 and 22) from the date on which the proceedings are discontinued as if they had never been instituted.

### CHAPTER III

#### THE TRANSITIONAL PERIOD

*The general rule*

- 19 (1) Except where this Chapter or Chapter IV provides otherwise, there is a transitional period, beginning on the starting date and lasting for one year, for any agreement made before the starting date.
- (2) The Chapter I prohibition does not apply to an agreement to the extent to which there is a transitional period for the agreement.
- (3) The Secretary of State may by regulations provide for sections 13 to 16 and Schedule 5 to apply with such modifications (if any) as may be specified in the regulations, in respect of applications to the Director about agreements for which there is a transitional period.

**Commencement Information**

**I30** [Sch. 13 para. 19](#) wholly in force; [Sch. 13 para. 19](#) not in force at Royal Assent see [s. 76\(3\)](#); [Sch. 13 para. 19\(3\)](#) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); [Sch. 13 para. 19\(1\)](#) and (2) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

*Cases for which there is no transitional period*

- 20 (1) There is no transitional period for an agreement to the extent to which, immediately before the starting date, it is—
- (a) void under section 2(1) or 35(1)(a) of the RTPA;
  - (b) the subject of an order under section 2(2) or 35(3) of the RTPA; or

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- (c) unlawful under section 1, 2 or 11 of the RPA or void under section 9 of that Act.
- (2) There is no transitional period for an agreement to the extent to which, before the starting date, a person has acted unlawfully for the purposes of section 27ZA(2) or (3) of the RTPA in respect of the agreement.
- (3) There is no transitional period for an agreement to which paragraph 25(4) applies.
- (4) There is no transitional period for—
  - (a) an agreement in respect of which there are continuing proceedings, or
  - (b) an agreement relating to goods in respect of which there are continuing proceedings,to the extent to which the agreement is, when the proceedings are determined, void or unlawful.

*Continuing proceedings under the RTPA*

- 21 In the case of an agreement which is the subject of continuing proceedings under the RTPA, the transitional period begins—
- (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.

*Continuing proceedings under the RPA*

- 22 (1) In the case of an agreement relating to goods which are the subject of continuing proceedings under the RPA, the transitional period for the exempt provisions of the agreement begins—
- (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.
- (2) In sub-paragraph (1) “exempt provisions” has the meaning given by paragraph 14(3).

*Provisions not contrary to public interest*

- 23 (1) To the extent to which an agreement contains provisions which, immediately before the starting date, are provisions which the Court has found not to be contrary to the public interest, the transitional period lasts for five years.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) To the extent to which an agreement which on the starting date is the subject of continuing proceedings is, when the proceedings are determined, found by the Court not to be contrary to the public interest, the transitional period lasts for five years.

*Goods*

- 24 (1) In the case of an agreement relating to goods which, immediately before the starting date, are exempt under section 14 of the RPA, there is a transitional period for the agreement to the extent to which it consists of exempt provisions.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) In the case of an agreement relating to goods—

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- (a) which on the starting date are the subject of continuing proceedings, and
- (b) which, when the proceedings are determined, are found to be exempt under section 14 of the RPA,

there is a transitional period for the agreement, to the extent to which it consists of exempt provisions.

- (4) In each case, the transitional period lasts for five years.
- (5) In sub-paragraphs (1) and (3) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
  - (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.

*Transitional period for certain agreements*

- 25 (1) This paragraph applies to agreements—
- (a) which are subject to registration under the RTPA but which—
    - (i) are not non-notifiable agreements within the meaning of section 27A of the RTPA, or
    - (ii) are not agreements to which paragraph 5 applies; and
  - (b) in respect of which the time for furnishing relevant particulars as required by or under the RTPA expires on or after the starting date.
- (2) “Relevant particulars” means—
- (a) particulars which are required to be furnished by virtue of section 24 of the RTPA; or
  - (b) particulars of any variation of an agreement which are required to be furnished by virtue of sections 24 and 27 of the RTPA.
- (3) There is a transitional period of one year for an agreement to which this paragraph applies if—
- (a) relevant particulars are furnished before the starting date; and
  - (b) no person has acted unlawfully (for the purposes of section 27ZA(2) or (3) of the RTPA) in respect of the agreement.
- (4) If relevant particulars are not furnished by the starting date, section 35(1)(a) of the RTPA does not apply in relation to the agreement (unless sub-paragraph (5) applies).
- (5) This sub-paragraph applies if a person falling within section 27ZA(2) or (3) of the RTPA has acted unlawfully for the purposes of those subsections in respect of the agreement.

*Special cases*

- 26 (1) In the case of an agreement in respect of which—
- (a) a direction under section 127(2) of the <sup>M97</sup>Financial Services Act 1986 (“the 1986 Act”) is in force immediately before the starting date, or
  - (b) a direction under section 194A(3) of the <sup>M98</sup>Broadcasting Act 1990 (“the 1990 Act”) is in force immediately before the starting date,
- the transitional period lasts for five years.
- (2) To the extent to which an agreement is the subject of a declaration—



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- (a) made by the Treasury under section 127(3) of the 1986 Act, and
  - (b) in force immediately before the starting date,
- the transitional period lasts for five years.
- (3) Sub-paragraphs (1) and (2) do not affect the power of—
- (a) the Treasury to make a declaration under section 127(2) of the 1986 Act (as amended by Schedule 2 to this Act),
  - (b) the Secretary of State to make a declaration under section 194A of the 1990 Act (as amended by Schedule 2 to this Act),
- in respect of an agreement for which there is a transitional period.

#### **Marginal Citations**

**M97** 1986 c. 60.

**M98** 1990 c. 42.

## **CHAPTER IV**

### **THE UTILITIES**

#### *General*

- 27 In this Chapter “the relevant period” means the period beginning with the starting date and ending immediately before the fifth anniversary of that date.

#### *Electricity*

- 28 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of a section 100 order.

*Status: Point in time view as at 01/03/2000.*

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- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of a section 100 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 29—  
 “section 100 order” means an order made under section 100 of the<sup>M99</sup>Electricity Act 1989; and  
 expressions which are also used in Part I of the Electricity Act 1989 have the same meaning as in that Part.

#### Marginal Citations

M99 1989 c. 29.

#### *Electricity: power to make transitional orders*

- 29 (1) There is a transitional period for an agreement (whether made before or after the starting date) relating to the generation, transmission or supply of electricity which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date on which the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Electricity Supply and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.
- (7) In the application of this paragraph to Northern Ireland, the reference in sub-paragraph (5) to the Director General of Electricity Supply is to be read as a reference to the Director General of Electricity Supply for Northern Ireland.

#### *Gas*

- 30 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of section 62 or a section 62 order, there is a transitional period—

*Status: Point in time view as at 01/03/2000.*

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- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of section 62 or a section 62 order, there is a transitional period—
  - (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of section 62 or a section 62 order, there is a transitional period—
  - (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of section 62 or a section 62 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of section 62 or a section 62 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) also applies in relation to a modification which is treated as an agreement made on or after 28th November 1985 by virtue of section 62(4).
- (7) Sub-paragraph (3) is subject to paragraph 20.
- (8) In this paragraph and paragraph 31—
  - “section 62” means section 62 of the <sup>M100</sup>Gas Act 1986;
  - “section 62 order” means an order made under section 62.

#### Marginal Citations

M100 1986 c. 44.

#### *Gas: power to make transitional orders*

- 31
- (1) There is a transitional period for an agreement of a description falling within section 62(2)(a) and (b) or section 62(2A)(a) and (b) which—
    - (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
    - (b) satisfies such conditions as may be specified in the order.
  - (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.

*Status: Point in time view as at 01/03/2000.*

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- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
  - (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
 the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Gas Supply and the Director.
- (6) The conditions specified in a transitional order may include—
  - (a) conditions which are to be satisfied in relation to a time before the coming into force of this paragraph;
  - (b) conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Secretary of State, the Director or the Director General of Gas Supply for determination after such consultation as may be so specified.

*Gas: Northern Ireland*

- 32
- (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of an Article 41 order, there is a transitional period—
    - (a) beginning on the starting date; and
    - (b) ending at the end of the relevant period.
  - (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of an Article 41 order, there is a transitional period—
    - (a) beginning on the date on which the agreement is made; and
    - (b) ending at the end of the relevant period.
  - (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of an Article 41 order, there is a transitional period—
    - (a) beginning on the date on which the variation is made; and
    - (b) ending at the end of the relevant period.
  - (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of an Article 41 order.
  - (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of an Article 41 order, the transitional period ends on the date on which the agreement so ceases.
  - (6) Sub-paragraph (3) is subject to paragraph 20.
  - (7) In this paragraph and paragraph 33—

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“Article 41 order” means an order under Article 41 of the <sup>M101</sup>Gas (Northern Ireland) Order 1996;

“Department” means the Department of Economic Development.

#### Marginal Citations

[M101 S.I. 1996/275 \(N.I. 2\).](#)

#### *Gas: Northern Ireland – power to make transitional orders*

- 33 (1) There is a transitional period for an agreement of a description falling within Article 41(1) which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Department (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Department must consult the Director General of Gas for Northern Ireland and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

#### *Railways*

- 34 (1) In this paragraph—
- “section 131” means section 131 of the <sup>M102</sup>Railways Act 1993 (“the 1993 Act”);
- “section 131 agreement” means an agreement—
- (a) to which the RTPA does not apply immediately before the starting date by virtue of section 131(1); or
  - (b) in respect of which a direction under section 131(3) is in force immediately before that date;
- “non-exempt agreement” means an agreement relating to the provision of railway services (whether made before or after the starting date) which is not a section 131 agreement; and
- “railway services” has the meaning given by section 82 of the 1993 Act.

*Status: Point in time view as at 01/03/2000.*

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- (2) For a section 131 agreement there is a transitional period of five years.
- (3) There is a transitional period for a non-exempt agreement to the extent to which the agreement is at any time before the end of the relevant period required or approved—
  - (a) by the Secretary of State or the Rail Regulator in pursuance of any function assigned or transferred to him under or by virtue of any provision of the 1993 Act;
  - (b) by or under any agreement the making of which is required or approved by the Secretary of State or the Rail Regulator in the exercise of any such function; or
  - (c) by or under a licence granted under Part I of the 1993 Act.
- (4) The transitional period conferred by sub-paragraph (3)—
  - (a) is to be taken to have begun on the starting date; and
  - (b) ends at the end of the relevant period.
- (5) Sub-paragraph (3) is subject to paragraph 20.
- (6) Any variation of a section 131 agreement on or after the starting date is to be treated, for the purposes of this paragraph, as a separate non-exempt agreement.

**Marginal Citations**

**M102** 1993 c. 43.

*The regulators*

- 35 (1) Subject to sub-paragraph (3), each of the regulators may exercise, in respect of sectoral matters and concurrently with the Director, the functions of the Director under paragraph 3, 7, 19(3), 36, 37, 38 or 39.
- (2) In sub-paragraph (1) “sectoral matters” means—
  - (a) in the case of the Director General of Telecommunications, the matters referred to in section 50(3) of the <sup>M103</sup>Telecommunications Act 1984;
  - (b) in the case of the Director General of Gas Supply, the matters referred to in section 36A(3) and (4) of the <sup>M104</sup>Gas Act 1986;
  - (c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the <sup>M105</sup>Electricity Act 1989;
  - (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the <sup>M106</sup>Electricity (Northern Ireland) Order 1992;
  - (e) in the case of the Director General of Water Services, the matters referred to in section 31(3) of the <sup>M107</sup>Water Industry Act 1991;
  - (f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the <sup>M108</sup>Railways Act 1993;
  - (g) in the case of the Director General of Gas for Northern Ireland, the matters referred to in Article 23(3) of the <sup>M109</sup>Gas (Northern Ireland) Order 1996.

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- (3) The power to give directions in paragraph 7(2) is exercisable by the Director only but if the Director is preparing directions which relate to a matter in respect of which a regulator exercises concurrent jurisdiction, he must consult that regulator.
- (4) Consultations conducted by the Director before the enactment date, with a view to preparing directions which have effect on or after that date, are to be taken to satisfy sub-paragraph (3).
- (5) References to enactments in sub-paragraph (2) are to the enactments as amended by or under this Act.

#### Marginal Citations

- M103 1984 c. 12.
- M104 1986 c. 44.
- M105 1989 c. 29.
- M106 S.I. 1992/231 (N.I.1).
- M107 1991 c. 56.
- M108 1993 c. 43.
- M109 S.I. 1996/275 (N.I.2).

## CHAPTER V

### EXTENDING THE TRANSITIONAL PERIOD

- 36 (1) A party to an agreement for which there is a transitional period may apply to the Director, not less than three months before the end of the period, for the period to be extended.
- (2) The Director may (on his own initiative or on an application under sub-paragraph (1))
- (a) extend a one-year transitional period by not more than twelve months;
  - (b) extend a transitional period of any period other than one year by not more than six months.
- (3) An application under sub-paragraph (1) must—
- (a) be in such form as may be specified; and
  - (b) include such documents and information as may be specified.
- (4) If the Director extends the transitional period under this paragraph, he must give notice in such form, and to such persons, as may be specified.
- (5) The Director may not extend a transitional period more than once.
- (6) In this paragraph—
- “person” has the same meaning as in Part I; and
  - “specified” means specified in rules made by the Director under section 51.

*Status: Point in time view as at 01/03/2000.*

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## CHAPTER VI

### TERMINATING THE TRANSITIONAL PERIOD

#### *General*

- 37 (1) Subject to sub-paragraph (2), the Director may by a direction in writing terminate the transitional period for an agreement, but only in accordance with paragraph 38.
- (2) The Director may not terminate the transitional period, nor exercise any of the powers in paragraph 38, in respect of an agreement which is excluded from the Chapter I prohibition by virtue of any of the provisions of Part I of this Act other than paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 [<sup>F2</sup>or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000].

#### **Textual Amendments**

**F2** Words in [Sch. 13 para. 37\(2\)](#) inserted (1.3.2000) by [S.I. 2000/311, art. 2](#)

#### *Circumstances in which the Director may terminate the transitional period*

- 38 (1) If the Director is considering whether to give a direction under paragraph 37 (“a direction”), he may in writing require any party to the agreement concerned to give him such information in connection with that agreement as he may require.
- (2) If at the end of such period as may be specified in rules made under section 51, a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (1), the Director may give a direction.
- (3) The Director may also give a direction if he considers—
- (a) that the agreement would, but for the transitional period or a relevant exclusion, infringe the Chapter I prohibition; and
  - (b) that he would not be likely to grant the agreement an unconditional individual exemption.
- (4) For the purposes of sub-paragraph (3) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (5) In this paragraph—
- “person” has the same meaning as in Part I;
  - “relevant exclusion” means an exclusion under paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3.

#### *Procedural requirements on giving a paragraph 37 direction*

- 39 (1) The Director must specify in a direction under paragraph 37 (“a direction”) the date on which it is to have effect (which must not be less than 28 days after the direction is given).
- (2) Copies of the direction must be given to—
- (a) each of the parties concerned, and



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- (b) the Secretary of State,  
not less than 28 days before the date on which the direction is to have effect.
- (3) In relation to an agreement to which a direction applies, the transitional period (if it has not already ended) ends on the date specified in the direction unless, before that date, the direction is revoked by the Director or the Secretary of State.
- (4) If a direction is revoked, the Director may give a further direction in respect of the same agreement only if he is satisfied that there has been a material change of circumstance since the revocation.
- (5) If, as a result of paragraph 24(1) or (3), there is a transitional period in respect of provisions of an agreement relating to goods—
- (a) which immediately before the starting date are exempt under section 14 of the RPA, or
  - (b) which, when continuing proceedings are determined, are found to be exempt under section 14 of the RPA,
- the period is not affected by paragraph 37 or 38.

## PART V

### THE FAIR TRADING ACT 1973

#### *References to the Monopolies and Mergers Commission*

- 40 (1) If, on the date on which the repeal by this Act of a provision mentioned in subparagraph (2) comes into force, the Monopolies and Mergers Commission has not completed a reference which was made to it before that date, continued consideration of the reference may include consideration of a question which could not have been considered if the provision had not been repealed.
- (2) The provisions are—
- (a) sections 10(2), 54(5) and 78(3) and paragraph 3(1) and (2) of Schedule 8 to the Fair Trading Act 1973 (c. 41);
  - (b) section 11(8)(b) of the Competition Act 1980 (c. 21);
  - (c) section 14(2) of the Telecommunications Act 1984 (c. 12);
  - (d) section 45(3) of the Airports Act 1986 (c. 31);
  - (e) section 25(2) of the Gas Act 1986 (c. 44);
  - (f) section 13(2) of the Electricity Act 1989 (c. 29);
  - (g) section 15(2) of the Water Industry Act 1991 (c. 56);
  - (h) article 16(2) of the <sup>M110</sup>Electricity (Northern Ireland) Order 1992;
  - (i) section 14(2) of the Railways Act 1993 (c. 43);
  - (j) article 36(3) of the <sup>M111</sup>Airports (Northern Ireland) Order 1994;
  - (k) article 16(2) of the <sup>M112</sup>Gas (Northern Ireland) Order 1996.

#### **Marginal Citations**

**M110** S.I. 1992/231 (N.I. 1).

**M111** S.I. 1994/426 (N.I. 1).

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**M112** S.I. 1996/275 (N.I. 2).

### *Orders under Schedule 8*

- 41 (1) In this paragraph—
- “the 1973 Act” means the <sup>M113</sup>Fair Trading Act 1973;
  - “agreement” means an agreement entered into before the date on which the repeal of the limiting provisions comes into force;
  - “the order” means an order under section 56 or 73 of the 1973 Act;
  - “the limiting provisions” means sub-paragraph (1) or (2) of paragraph 3 of Schedule 8 to the 1973 Act (limit on power to make orders under paragraph 1 or 2 of that Schedule) and includes any provision of the order included because of either of those sub-paragraphs; and
  - “transitional period” means the period which—
    - (a) begins on the day on which the repeal of the limiting provisions comes into force; and
    - (b) ends on the first anniversary of the starting date.
- (2) Sub-paragraph (3) applies to any agreement to the extent to which it would have been unlawful (in accordance with the provisions of the order) but for the limiting provisions.
- (3) As from the end of the transitional period, the order is to have effect in relation to the agreement as if the limiting provisions had never had effect.

#### **Marginal Citations**

**M113** 1973 c. 41.

### *Part III of the Act*

- 42 (1) The repeals made by section 1 do not affect any proceedings in respect of an application which is made to the Court under Part III of the <sup>M114</sup>Fair Trading Act 1973, but is not determined, before the starting date.
- (2) The question whether (for the purposes of sub-paragraph (1)) an application has been determined is to be decided in accordance with sub-paragraphs (3) and (4).
- (3) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (4) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

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- (5) Any amendment made by Schedule 12 to this Act which substitutes references to a relevant Court for references to the Court is not to affect proceedings of the kind referred to in sub-paragraph (1).

**Marginal Citations**

M114 1973 c. 41.

**PART VI**

THE COMPETITION ACT 1980

*Undertakings*

- 43 (1) Subject to sub-paragraph (2), an undertaking accepted by the Director under section 4 or 9 of the <sup>M115</sup>Competition Act 1980 ceases to have effect on the coming into force of the repeal by this Act of that section.
- (2) If the undertaking relates to an agreement which on the starting date is the subject of continuing proceedings, the undertaking continues to have effect for the purposes of section 29 of the Competition Act 1980 until the proceedings are determined.

**Marginal Citations**

M115 1980 c. 21.

*Application of sections 25 and 26*

- 44 The repeals made by section 1 do not affect—
- (a) the operation of section 25 of the Competition Act 1980 in relation to an application under section 1(3) of the RTPA which is made before the starting date;
  - (b) an application under section 26 of the Competition Act 1980 which is made before the starting date.

**PART VII**

MISCELLANEOUS

*Disclosure of information*

- 45 (1) Section 55 of this Act applies in relation to information which, immediately before the starting date, is subject to section 41 of the RTPA as it applies in relation to information obtained under or as a result of Part I.
- (2) But section 55 does not apply to any disclosure of information of the kind referred to in sub-paragraph (1) if the disclosure is made—

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- (a) for the purpose of facilitating the performance of functions of a designated person under the <sup>M116</sup>Control of Misleading Advertisements Regulations 1988; or
  - (b) for the purposes of any proceedings before the Court or of any other legal proceedings under the RTPA or the <sup>M117</sup>Fair Trading Act 1973 or the Control of Misleading Advertisements Regulations 1988.
- (3) Section 56 applies in relation to information of the kind referred to in subparagraph (1) if particulars containing the information have been entered or filed on the special section of the register maintained by the Director under, or as a result of, section 27 of the RTPA or paragraph 10 of this Schedule.
- (4) Section 55 has effect, in relation to the matters as to which section 41(2) of the RTPA had effect, as if it contained a provision similar to section 41(2).

#### Marginal Citations

**M116** S.I. 1988/915.

**M117** 1973 c. 41.

#### *The Court*

- 46 If it appears to the Lord Chancellor that a person who ceases to be a non-judicial member of the Court as a result of this Act should receive compensation for loss of office, he may pay to him out of moneys provided by Parliament such sum as he may with the approval of the Treasury determine.

### SCHEDULE 14

Section 74(3).

#### REPEALS AND REVOCATIONS

#### PART I

#### REPEALS

#### Commencement Information

**I31** Sch. 14 Pt. I partly in force; Sch. 14 Pt. I not in force at Royal Assent see s. 76(3); Sch. 14 Pt. I in force for certain purposes at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 14 Pt. I in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 14 Pt. I in force for certain purposes at 10.11.1999 by S.I. 1999/2859, art. 2; Sch. 14 Pt. I (except the repeal of Restrictive Practices Court Act 1976) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

Chapter	Short title	Extent of repeal
1973 c. 41.	The Fair Trading Act 1973.	Section 4. Section 10(2).

*Status: Point in time view as at 01/03/2000.*

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Section 45.

Section 54(5).

Section 78(3).

In section 81(1), in the words before paragraph (a), from “and the Commission” to “of this Act”; in paragraph (b), “or the Commission, as the case may be” and “or of the Commission”; in subsection (2), “or the Commission” and “or of the Commission” and in subsection (3), from “and, in the case,” to “85 of this Act”, and “or the Commission, as the case may be,”.

In section 83, in subsection (1) “Subject to subsection (1A) below” and subsection (1A).

In section 135(1), in the words before paragraph (a) and in paragraph (b), “or the Commission”, and paragraph (a).

Schedule 3.

In Schedule 8, paragraph 3(1) and (2).

1976 c. 33.	The Restrictive Practices Court Act 1976.	The whole Act.
1976 c. 34.	The Restrictive Trade Practices Act 1976.	The whole Act.
1976 c. 53.	The Resale Prices Act 1976.	The whole Act.
1976 c. 76.	The Energy Act 1976.	Section 5.
1977 c. 19.	The Restrictive Trade Practices Act 1977.	The whole Act.
1977 c. 37.	The Patents Act 1977.	Sections 44 and 45.
1979 c. 38.	The Estate Agents Act 1979.	In section 10(3), “or the Restrictive Trade Practices Act 1976.”
1980 c. 21.	The Competition Act 1980.	Sections 2 to 10.

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			In section 11(8), paragraph (b) and the “and” immediately before it.
			In section 13(1), from “but the giving” to the end.
			In section 15, subsections (2) (b), (3) and (4).
			Section 16(3).
			In section 17, “8(1)” in subsections (1) and (3) to (5) and in subsection (2) “8(1) or”.
			In section 19(3), paragraph (d).
			In section 19(5)(a), “or in anything published under section 4(2)(a) above”.
			Section 22.
			Sections 25 to 30.
			In section 31, subsection (2) and “10” in subsection (3).
			Section 33(3) and (4).
1984 c. 12.	The Telecommunications Act 1984.	Section 14(2).	
			In section 16(5), the “or” immediately after paragraph (a).
			In section 50(4), paragraph (c) and the “and” immediately after it.
			In section 50(5), “or (3)”.
			In section 50(7), “or the 1980 Act”.
			In section 95(1), “or section 10(2)(a) of the 1980 Act”.
			In section 95(2), paragraph (c) and the “or” immediately before it.
			In section 95(3), “or the 1980 Act”.
			In section 101(3), paragraphs (d) and (e).

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1986 c. 31.	The Airports Act 1986.	Section 45(3).  In section 54(1), “or section 10(2)(a) of the 1980 Act”.  In section 54(3), paragraph (c) and the “or” immediately before it.  In section 54(4), “or the 1980 Act”.  In section 56(a)(ii), “or the 1980 Act”.
1986 c. 44.	The Gas Act 1986.	Section 25(2).  In section 27(1), “or section 10(2)(a) of the Competition Act 1980”.  In section 27(3)(a), from “or” to “competition reference”.  In section 27(6), “or the said Act of 1980”.  In section 28(5), the “or” immediately after paragraph (aa).  In section 36A(5), paragraph (d) and the “and” immediately before it.  In section 36A(6), “or (3)”.  In section 36A(8), “or under the 1980 Act”.  In section 36A(9), “or the 1980 Act”.  In section 42(3), paragraphs (e) and (f).
1986 c. 60.	The Financial Services Act 1986.	Section 126.
1987 c. 43.	The Consumer Protection Act 1987.	In section 38(3), paragraphs (e) and (f).
1987 c. 53.	The Channel Tunnel Act 1987.	In section 33(2), paragraph (c) and the “and” immediately before it.  In section 33(5), paragraphs (b) and (c).

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1988 c. 54.	The Road Traffic (Consequential Provisions) Act 1988.	In Schedule 3, paragraph 19.
1989 c. 15.	The Water Act 1989.	In section 174(3), paragraphs (d) and (e).
1989 c. 29.	The Electricity Act 1989.	Section 13(2).  In section 15(1), paragraph (b) and the “or” immediately before it.  In section 15(2), paragraph (c) and the “or” immediately before it.  In section 15(3), “or the 1980 Act”.  In section 25(5), the “or” immediately after paragraph (b).  In section 43(4), paragraph (c) and the “and” immediately after it.  In section 43(5), “or (3)”.  In section 43(7), “or the 1980 Act”.  In section 57(3), paragraphs (d) and (e).
1989 c. 40.	The Companies Act 1989.	In Schedule 20, paragraphs 21 to 24.
1990 c. 42.	The Broadcasting Act 1990.	In section 193(2), paragraph (c) and the “and” immediately before it.  In section 193(4), “or the Competition Act 1980”.
1991 c. 56.	The Water Industry Act 1991.	In section 12(5), “or the 1980 Act”.  Section 15(2).  In section 17(1), paragraph (b) and the “or” immediately before it.  In section 17(2), paragraph (c) and the “or” immediately before it.  In section 17(4), “or the 1980 Act”.



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		In section 31(4), paragraph (c) and the “and” immediately before it.
		In section 31(5), “or in subsection (3) above”.
		In section 31(6), “or in subsection (3) above”.
		In section 31(7), “or (3)”.
		In section 31(9), “or the 1980 Act”.
		In Part II of Schedule 15, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1991 c. 57.	The Water Resources Act 1991.	In Part II of Schedule 24, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1993 c. 21.	The Osteopaths Act 1993.	In section 33(4), paragraph (b) and the “or” immediately before it. In section 33(5), “or section 10 of the Act of 1980”.
1993 c. 43.	The Railways Act 1993.	Section 14(2). In section 16(1), paragraph (b) and the “or” immediately before it. In section 16(2), paragraph (c) and the “or” immediately before it. In section 16(5), “or the 1980 Act”. In section 67(4), paragraph (c) and the “and” immediately after it. In section 67(6)(a), “or (3)”. In section 67(9), “or under the 1980 Act”. Section 131. In section 145(3), paragraphs (d) and (e).

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1994 c. 17.	The Chiropractors Act 1994.	In section 33(4), paragraph (b) and the “or” immediately before it.  In section 33(5), “or section 10 of the Act of 1980”.
1994 c. 21.	The Coal Industry Act 1994.	In section 59(4), paragraphs (e) and (f).
1994 c. 40.	The Deregulation and Contracting Out Act 1994.	Sections 10 and 11.  In section 12, subsections (1) to (6).  In Schedule 4, paragraph 1.  In Schedule 11, in paragraph 4, sub-paragraphs (3) to (6).
1996 c. 55.	The Broadcasting Act 1996.	Section 77(2).

## PART II

### REVOCATIONS

#### Commencement Information

**I32** Sch. 14 Pt. II wholly in force; Sch. 14 Pt. II not in force at Royal Assent see s. 76(3); Sch. 14 Pt. II in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 14 Pt. II fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

Reference	Title	Extent of revocation
S.I. 1981/1675 (N.I.26).	The Magistrates’ Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraphs 42 and 43.
S.I. 1982/1080 (N.I.12).	The Agricultural Marketing (Northern Ireland) Order 1982.	In Schedule 8, the entry relating to paragraph 16(2) of Schedule 3 to the Fair Trading Act 1973 and in the entry relating to the Competition Act 1980, “and 15(3)”.
S.I. 1986/1035 (N.I.9).	The Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986.	In Part II of Schedule 1, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.

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S.I. 1992/231 (N.I.1).	The Electricity (Northern Ireland) Order 1992.	Article 16(2).  In Article 18— (a) in paragraph (1), subparagraph (b) and the “or” immediately before it; (b) in paragraph (2), subparagraph (c) and the “or” immediately before it; (c) in paragraph (3) “or the 1980 Act”.  In Article 28(5), the “or” immediately after subparagraph (b).  In Article 46— (a) in paragraph (4), subparagraph (c) and the “and” immediately after it; (b) in paragraph (5), “or (3)”; (c) in paragraph (7), “or the 1980 Act”.  Article 61(3)(f) and (g).  In Schedule 12, paragraph 16.
S.I. 1994/426 (N.I.1).	The Airports (Northern Ireland) Order 1994.	Article 36(3).  In Article 45— (a) in paragraph (1), “or section 10(2)(a) of the 1980 Act”; (b) in paragraph (3), subparagraph (c) and the “or” immediately before it; (c) in paragraph (4), “or the 1980 Act”.  In Article 47(a)(ii), “or the 1980 Act”.  In Schedule 9, paragraph 5.
S.I. 1996/275 (N.I.2).	The Gas (Northern Ireland) Order 1996.	Article 16(2).  In Article 18— (a) in paragraph (1), subparagraph (b) and the “or” immediately before it; (b) in paragraph (3), subparagraph (c) and the “or” immediately before it;

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(c) in paragraph (5), “or the 1980 Act”.

In Article 19(5), the “or” immediately after subparagraph (b).

In Article 23—

(a) in paragraph (4), subparagraph (d) and the “and” immediately before it;  
(b) in paragraph (5), “or (3)”;  
(c) in paragraph (7), “or under the 1980 Act”;  
(d) in paragraph (8), “or the 1980 Act”.

Article 44(4)(f) and (g).

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