

## SCHEDULES

### SCHEDULE 25

Section 278

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Registered Designs Act 1949 (c. 88)*

- 1 (1) The Registered Designs Act 1949 is amended as follows.
- (2) In section 11A(1) (powers exercisable in consequence of report of Competition Commission), paragraphs (a) and (b) shall cease to have effect.
- (3) After section 11A there is inserted—

##### **“11AB Powers exercisable following merger and market investigations**

- (1) Subsection (2) below applies where—
  - (a) section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following merger or market investigations) applies;
  - (b) the Competition Commission or (as the case may be) the Secretary of State considers that it would be appropriate to make an application under this section for the purpose of remedying, mitigating or preventing a matter which cannot be dealt with under the enactment concerned; and
  - (c) the matter concerned involves conditions in licences granted in respect of a registered design by its proprietor restricting the use of the design by the licensee or the right of the proprietor to grant other licences.
- (2) The Competition Commission or (as the case may be) the Secretary of State may apply to the registrar to take action under this section.
- (3) Before making an application the Competition Commission or (as the case may be) the Secretary of State shall publish, in such manner as it or he thinks appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to it or him to be affected.
- (4) The registrar may, if it appears to him on an application under this section that the application is made in accordance with this section, by order cancel or modify any condition concerned of the kind mentioned in subsection (1) (c) above.
- (5) An appeal lies from any order of the registrar under this section.

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- (6) References in this section to the Competition Commission shall, in cases where section 75(2) of the Enterprise Act 2002 applies, be read as references to the Office of Fair Trading.
- (7) References in section 35, 36, 47, 63, 134 or 141 of the Enterprise Act 2002 (questions to be decided by the Competition Commission in its reports) to taking action under section 41(2), 55, 66, 138 or 147 shall include references to taking action under subsection (2) above.
- (8) An order made by virtue of this section in consequence of action under subsection (2) above where an enactment mentioned in subsection (1)(a) above applies shall be treated, for the purposes of sections 91(3), 92(1)(a), 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 3 or (as the case may be) 4 of that Act to make an enforcement order (within the meaning of the Part concerned)."

*Agricultural Marketing Act 1958 (c. 47)*

- 2 (1) The Agricultural Marketing Act 1958 is amended as follows.
- (2) In section 19A (action following report by Commission)—
  - (a) for subsection (1) there is substituted—
    - “(1) Subsection (2) applies in any of the following cases.
    - (1A) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
    - (1B) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
    - (1C) The third case is where—
      - (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
        - (i) certain matters indicated in the report operate against the public interest, and
        - (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
      - (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).”;
  - (b) in subsection (2)—

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- (i) the words from the beginning of the subsection to “this section” shall cease to have effect;
  - (ii) for the words from “those conclusions” to the end of the subsection there is substituted “a report of a committee of investigation had contained the conclusion that the provision of the scheme in question, or the act or omission in question, is contrary to the interests of consumers of the regulated product”;
- (c) after subsection (2) there is inserted—
- “(3) An order made by virtue of this section in a case mentioned in subsection (1A) or (1B) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).”
- (3) For the purposes of the Scotland Act 1998 (c. 46) the amendments made by subparagraph (2) shall be taken to be pre-commencement enactments within the meaning of that Act.
- (4) In section 47(2) (restrictions on disclosing certain information obtained under Act), in paragraph (aa) of the proviso—
- (a) for “the Director General of Fair Trading or any of the staff appointed by that Director General” there is substituted “the Office of Fair Trading”;
  - (b) for “the Director General to perform any functions of theirs or his” there is substituted “the Office of Fair Trading to perform any functions of theirs or its”;
  - (c) at the end there is inserted “or the Enterprise Act 2002”.

#### *Public Records Act 1958 (c. 51)*

- 3 (1) The Public Records Act 1958 is amended as follows.
- (2) In Part 2 of the Table at the end of paragraph 3 of Schedule 1 (definition of public records)—
- (a) the entry relating to the Office of the Director General of Fair Trading shall cease to have effect;
  - (b) the following entries are inserted at the appropriate places—
    - “Competition Service”
    - “Office of Fair Trading.”

#### *Superannuation Act 1972 (c. 11)*

- 4 (1) The Superannuation Act 1972 is amended as follows.
- (2) In Schedule 1 (kinds of employment in relation to which pension schemes may be made), in the list of “Other Bodies”, there is inserted at the appropriate place—
- “The Competition Service.”

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*Fair Trading Act 1973 (c. 41)*

- 5 (1) The 1973 Act is amended as follows.
- (2) In section 5 (principal functions of Commission), in subsection (2)—
- (a) for “the Director” there is substituted “the Office of Fair Trading”;
  - (b) for “his” (in each place) there is substituted “its”.
- (3) Sections 34 to 42 (additional functions of Director for protection of consumers) shall cease to have effect.
- (4) In section 93B (false or misleading information)—
- (a) in subsection (1)—
    - (i) for “the Director” there is substituted “the Office of Fair Trading”;
    - (ii) for “Parts IV, V, VI” there is substituted “Part 5”;
    - (iii) the words “or under the Competition Act 1980” shall cease to have effect;
  - (b) after subsection (4) there is inserted—
 

“(5) This section shall not have effect in relation to the furnishing of information to the Commission in connection with its functions under any provision of the Enterprise Act 2002 as applied by virtue of section 13B of the Telecommunications Act 1984 or section 44B of the Airports Act 1986.”

*Consumer Credit Act 1974 (c. 39)*

- 6 (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 1 (general functions of Director)—
- (a) in subsection (1)—
    - (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “the Office of Fair Trading (“the OFT”)”;
    - (ii) for “him” there is substituted “it”;
    - (iii) for “himself” there is substituted “itself”;
  - (b) in subsection (2)—
    - (i) for “Director” there is substituted “OFT”;
    - (ii) for “him” there is substituted “it”;
  - (c) in the sidenote, for “Director” there is substituted “OFT”;
- and in the heading before that section, for “DIRECTOR GENERAL OF FAIR TRADING” there is substituted “OFFICE OF FAIR TRADING”.
- (3) In section 2 (powers of Secretary of State)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsections (1)(b) and (2), for “his” there is substituted “its”;
  - (c) in subsection (4), for “him” there is substituted “it”.
- (4) In section 4 (dissemination of information and advice)—
- (a) for “Director” there is substituted “OFT”;
  - (b) for “he”, “him” and “his” there is substituted “it”, “it” and “its” respectively.
- (5) In section 6 (form etc. of applications)—

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- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3), for “him” there is substituted “it”.
- (6) In section 7 (penalty for false information), for “Director” (in each place) there is substituted “OFT”.
- (7) In section 22 (standard and group licences)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1)(b), for “his” and “he” there is substituted “its” and “it” respectively;
  - (c) in subsection (5), for “him” there is substituted “it”.
- (8) In section 25 (licensee to be a fit person)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (2), for “him” there is substituted “it”.
- (9) In section 27 (determination of applications)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (2), for “him” (in both places) there is substituted “it”.
- (10) In section 28 (exclusion from a group licence)—
  - (a) for “Director” (in both places) there is substituted “OFT”;
  - (b) for “he” there is substituted “it”;
  - (c) in paragraph (a), for “his” there is substituted “its”.
- (11) In section 29 (renewal)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (2), for “his” there is substituted “its”.
- (12) In section 30 (variation by request)—
  - (a) for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in subsection (4)(a), for “his” there is substituted “its”.
- (13) In section 31 (compulsory variation)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “he” (in both places) there is substituted “it”;
  - (c) in subsection (2)(a), for “his” there is substituted “its”;
  - (d) in subsection (3), for “he”, “his” and “him” there is substituted respectively “it”, “its” and “it” respectively;
  - (e) in subsection (4)(a), for “his” there is substituted “its”.
- (14) In section 32 (suspension and revocation)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “he” (in both places) there is substituted “it”;
  - (c) in subsection (2)(a), for “his” there is substituted “its”;
  - (d) in subsection (3), for “he”, “his” and “him” there is substituted “it”, “its” and “it” respectively;

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- (e) in subsection (4)(a), for “his” there is substituted “its”;
  - (f) in subsection (5), for “he” there is substituted “it”;
  - (g) in subsection (8), for “him” there is substituted “it”.
- (15) In section 33 (application to end suspension)—
- (a) for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in subsection (2)(a), for “his” there is substituted “its”.
- (16) In section 34 (representations to Director)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsections (2) and (3), for “his” there is substituted “its”.
- (17) In section 35 (the register)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsections (1) and (4), for “he” there is substituted “it”;
  - (c) in subsection (1)(c), for “him” there is substituted “it”.
- (18) In section 36 (duty to notify changes)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (6), for “him” there is substituted “it”.
- (19) In section 39 (offences against Part 3), for “Director” there is substituted “OFT”.
- (20) In section 40 (enforcement of agreements made by unlicensed trader)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (5), for “he” there is substituted “it”.
- (21) In section 41 (appeals to Secretary of State under Part 3), in subsection (1), for “Director” there is substituted “OFT”.
- (22) In section 49 (prohibition of canvassing debtor-creditor agreements off trade premises), for “Director” (in each place) there is substituted “OFT”.
- (23) In section 60 (form and content of agreements), in subsections (3) and (4), for “Director” (in each place) and “he” (in each place) there is substituted “OFT” and “it” respectively.
- (24) In section 64 (duty to give notice of cancellation rights), for “Director” (in each place) there is substituted “OFT”.
- (25) In section 74 (exclusion of certain agreements from Part 5)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3A), for “he” there is substituted “it”.
- (26) In section 101 (right to terminate hire agreement), in subsection (8), for “Director” (in each place) and “he” there is substituted “OFT” and “it” respectively.
- (27) In section 113 (Act not to be evaded by use of security), in subsection (2), for “Director” there is substituted “OFT”.

- (28) In section 148 (agreement for services of unlicensed trader)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (5), for “he” there is substituted “it”.
- (29) In section 149 (regulated agreements made on introductions by unlicensed credit-broker)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (5), for “he” there is substituted “it”.
- (30) In section 159 (correction of wrong information), for “Director” there is substituted “OFT”.
- (31) In section 160 (alternative procedure for business consumers)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “he” there is substituted “it”.
- (32) In section 161 (enforcement authorities)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) subsection (2) (requirement to notify Director of intended prosecution) is omitted;
  - (c) in subsection (3), for “he” and “him” there is substituted “it”.
- (33) In section 162 (powers of entry and inspection), in subsection (5), for “Director” there is substituted “OFT”.
- (34) In section 166 (notification of convictions and judgments to Director), for “Director” (in each place), “Director's” and “his” there is substituted “OFT”, “OFT's” and “its” respectively.
- (35) In section 170 (no further sanctions for breach of Act), for “his”, “Director” and “him” there is substituted “its”, “OFT” and “it” respectively.
- (36) In section 173 (contracting-out forbidden), in subsection (3), for “Director” there is substituted “OFT”.
- (37) In section 183 (determinations etc. by Director), for “Director” (in both places) and “him” there is substituted “OFT” and “it” respectively.
- (38) In section 189 (general interpretation provisions)—
- (a) in subsection (1)—
    - (i) the definition of “Director” shall cease to have effect;
    - (ii) in the definition of “general notice”, for “Director” and “him” there is substituted “OFT” and “it” respectively;
    - (iii) after the definition of “notice of cancellation” there is inserted—  
““OFT” means the Office of Fair Trading;”;

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- (iv) in the definition of “register”, for “Director” there is substituted “OFT”;
  - (b) in subsection (5), for “Director” (in both places) there is substituted “OFT”.
- (39) In section 191 (special provisions as to Northern Ireland)—
- (a) for “Director” (in both places) there is substituted “OFT”;
  - (b) in subsection (1), for “his” and “him” there is substituted “the OFT’s” and “the OFT” respectively.
- (40) In Schedule 1 (prosecution and punishment of offences), in the entry relating to section 7, for “Director” there is substituted “OFT”.

*Restrictive Practices Court Act 1976 (c. 33)*

- 7 (1) The Restrictive Practices Court Act 1976 is amended as follows.
- (2) In section 9 (procedure), in subsection (2)(d), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

*Patents Act 1977 (c. 37)*

- 8 (1) The Patents Act 1977 is amended as follows.
- (2) After section 50 there is inserted—

**“50A Powers exercisable following merger and market investigations**

- (1) Subsection (2) below applies where—
- (a) section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following merger or market investigations) applies;
  - (b) the Competition Commission or (as the case may be) the Secretary of State considers that it would be appropriate to make an application under this section for the purpose of remedying, mitigating or preventing a matter which cannot be dealt with under the enactment concerned; and
  - (c) the matter concerned involves—
    - (i) conditions in licences granted under a patent by its proprietor restricting the use of the invention by the licensee or the right of the proprietor to grant other licences; or
    - (ii) a refusal by the proprietor of a patent to grant licences on reasonable terms.
- (2) The Competition Commission or (as the case may be) the Secretary of State may apply to the comptroller to take action under this section.
- (3) Before making an application the Competition Commission or (as the case may be) the Secretary of State shall publish, in such manner as it or he thinks appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to it or him to be affected.



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- (4) The comptroller may, if it appears to him on an application under this section that the application is made in accordance with this section, by order cancel or modify any condition concerned of the kind mentioned in subsection (1)(c)(i) above or may, instead or in addition, make an entry in the register to the effect that licences under the patent are to be available as of right.
  - (5) References in this section to the Competition Commission shall, in cases where section 75(2) of the Enterprise Act 2002 applies, be read as references to the Office of Fair Trading.
  - (6) References in section 35, 36, 47, 63, 134 or 141 of the Enterprise Act 2002 (questions to be decided by the Competition Commission in its reports) to taking action under section 41(2), 55, 66, 138 or 147 shall include references to taking action under subsection (2) above.
  - (7) Action taken by virtue of subsection (4) above in consequence of an application under subsection (2) above where an enactment mentioned in subsection (1)(a) above applies shall be treated, for the purposes of sections 91(3), 92(1)(a), 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were the making of an enforcement order (within the meaning of the Part concerned) under the relevant power in Part 3 or (as the case may be) 4 of that Act.”
- (3) In section 51(1) (powers exercisable in consequence of report of Competition Commission), paragraphs (a) and (b) shall cease to have effect.
  - (4) In section 53(2) (statements in certain reports of the Competition Commission to be prima facie evidence of the matters stated) after “1980” there is inserted “or published under Part 3 or 4 of the Enterprise Act 2002”.

*Estate Agents Act 1979 (c. 38)*

- 9 (1) The Estate Agents Act 1979 is amended as follows.
- (2) In section 3 (orders prohibiting unfit persons from doing estate agency work)—
  - (a) in subsection (1), for “the Director General of Fair Trading (in this Act referred to as “the Director”)” there is substituted “the Office of Fair Trading (in this Act referred to as “the OFT”);
  - (b) for “Director” (in each place) there is substituted “OFT”;
  - (c) in subsection (2), for “he” there is substituted “it”;
  - (d) in subsections (4) and (5), for “he” (in each place) and “him” there is substituted “it”;and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”.
- (3) In section 4 (warning orders)—
  - (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “he” there is substituted “it”.
- (4) In section 5 (supplementary provisions as to orders under sections 3 and 4), for “Director” (in each place) there is substituted “OFT”.
- (5) In section 6 (revocation and variation of orders under sections 3 and 4)—
  - (a) for “Director” (in each place) there is substituted “OFT”;

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- (b) in subsection (1), for “him” there is substituted “it”;
  - (c) in subsections (3) to (5), for “he” (in each place) there is substituted “it”;
  - (d) in subsection (3), for “his” there is substituted “its”.
- (6) In section 7 (appeals), in subsection (1), for “Director” (in both places) there is substituted “OFT”.
- (7) In section 8 (register of orders etc.)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “him” and “his” there is substituted “it” and “its” respectively;
  - (c) in subsection (3), for “his” there is substituted “its”;
  - (d) in subsection (4), for “he” there is substituted “it”;
  - (e) in subsection (5), for “him” there is substituted “it”.
- (8) In section 9 (information for the Director)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “him” (in each place) and “his” there is substituted “it” and “its” respectively.
- (9) In—
- (a) section 11 (powers of entry and inspection),
  - (b) section 13 (clients' money held on trust or as agent), and
  - (c) section 15 (interest on clients' money),
- for “Director” there is substituted “OFT”.
- (10) In section 17 (exemptions from section 16)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “he” and “him” there is substituted “it”;
  - (c) in subsection (5), for “he” and “his” (in both places) there is substituted “it” and “its” respectively.
- (11) In—
- (a) section 19 (regulation of pre-contract deposits outside Scotland),
  - (b) section 20 (regulation of pre-contract deposits in Scotland), and
  - (c) section 21 (transactions in which an estate agent has a personal interest),
- for “Director” there is substituted “OFT”.
- (12) In section 25 (general duties of Director)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “himself” there is substituted “itself”;
  - (c) in subsections (2) and (3), for “him” there is substituted “it”;
  - (d) in subsection (3), for “he” there is substituted “it”.
- (13) In section 26 (enforcement authorities)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) subsection (2) (requirement to notify Director of intended prosecution) is omitted;
  - (c) in subsection (4), for “him” and “he” there is substituted “it”.
- (14) In—

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- (a) section 29 (service of notices etc.), and
  - (b) section 30 (orders and regulations),
- for “Director” (in each place) there is substituted “OFT”.

- (15) In section 33 (general interpretation provisions)—
- (a) the definition of “Director” shall cease to have effect;
  - (b) in the definition of “general notice”, for “Director” and “him” there is substituted “OFT” and “it” respectively;
  - (c) after the definition of “general notice” there is inserted—  
““OFT” means the Office of Fair Trading;”.

- (16) In Schedule 2 (procedure etc.)—
- (a) for “Director” and “Director’s” (in each place) there is substituted “OFT” and “OFT’s”;
  - (b) in paragraph 1, for “his” and “he” there is substituted “its” and “it” respectively;
  - (c) in paragraphs 3 and 5, for “he” there is substituted “it”;
  - (d) in paragraph 6, for “his” (in both places) and “he” (in both places) there is substituted “its” and “it” respectively;
  - (e) in paragraph 7, for “his” and “he” there is substituted “its” and “it” respectively;
  - (f) in paragraph 8, for “his”, “he” (in both places) and “him” there is substituted “its”, “it” and “it” respectively;
  - (g) in paragraph 9(1), for “his” (in both places) there is substituted “its”;
  - (h) in paragraph 10(2), for “he” there is substituted “it”.

### *Competition Act 1980 (c. 21)*

- 10 (1) The Competition Act 1980 is amended as follows.
- (2) In section 11 (references of public bodies and certain other persons to the Commission)—
- (a) in subsection (1)—
    - (i) at the end of paragraph (a) there is inserted “or”;
    - (ii) paragraph (c) and the word “or” before it shall cease to have effect;
    - (iii) for “paragraph (a), (b) or (c)” there is substituted “paragraph (a) or (b)”;
  - (b) subsections (2), (9) and (9A) shall cease to have effect.
- (3) After section 11 there is inserted—

#### **“11A References under section 11: time-limits**

- (1) Every reference under section 11 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 11 above shall not have effect (and no action shall be taken in relation to it under section 12 below) unless the report is made before the end of the period specified in the

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reference or such further period (if any) as may be allowed by the Secretary of State under subsection (3) below.

- (3) The Secretary of State may, if he has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than three months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Secretary of State shall publish any extension made by him under subsection (3) above in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.

#### **11B References under section 11: powers of investigation and penalties**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 11 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted;
  - (b) in subsection (4), for the word “publication” there were substituted “laying before both Houses of Parliament”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.

#### **11C References under section 11: further supplementary provisions**

- (1) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions under this Act as it applies in relation to

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functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” were omitted.

- (2) Section 125 of the Enterprise Act 2002 (offences by bodies corporate) shall apply for the purposes of this Act as it applies for the purposes of Part 3 of that Act.
- (3) For the purposes of section 12 below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

### **11D Interim orders**

- (1) Subsection (2) below applies where, in the circumstances specified in subsection (1) of section 12 below, the Secretary of State has under consideration the making of an order under subsection (5) of that section.
- (2) The Secretary of State may by order, for the purpose of preventing pre-emptive action—
  - (a) prohibit or restrict the doing of things which the Secretary of State considers would constitute pre-emptive action;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 19 of Schedule 8 to the Enterprise Act 2002 (information powers).
- (3) An order under this section shall come into force at such time as is determined by or under the order.
- (4) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on the making of the order under section 12(5) below or (as the case may be) on the making of the decision not to make such an order.
- (5) The Secretary of State shall publish any decision made by him not to make an order under section 12(5) below in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.
- (6) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or revoking an order under this section.
- (7) The following provisions of Part 3 of the Enterprise Act 2002 shall apply in relation to orders under this section as they apply in relation to orders under paragraph 2 of Schedule 7 to that Act—
  - (a) section 86(2) and (3) (enforcement orders: general provisions);
  - (b) section 87 (delegated power of directions); and

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- (c) section 94(1) to (5), (8) and (9) (rights to enforce orders).
- (8) In this section “pre-emptive action” means action which might impede the making of an order under section 12(5) below.”
- (4) In section 12 (orders following report under section 11)—
- (a) in subsection (5) for the words from “by order” to the end there is substituted “make an order under this subsection”;
- (b) after subsection (5) there is inserted—
- “(5A) An order under subsection (5) above may contain anything permitted by Schedule 8 to the Enterprise Act 2002, except paragraphs 8, 13 and 14 of that Schedule.
- (5B) An order under subsection (5) above shall come into force at such time as is determined by or under the order.”;
- (c) for subsection (6) there is substituted—
- “(6) The following provisions of Part 3 of the Enterprise Act 2002 shall apply in relation to orders under subsection (5) above as they apply in relation to orders under paragraph 11 of Schedule 7 to that Act—
- (a) section 86(2) and (3) (enforcement orders: general provisions);
- (b) section 87 (delegated power of directions);
- (c) section 88 (contents of certain enforcement orders);
- (d) section 94(1) to (5), (8) and (9) (rights to enforce orders);
- and
- (e) Schedule 10 (procedural requirements for orders).
- (7) The Secretary of State shall publish any decision made by him to dispense with the requirements of Schedule 10 to the Enterprise Act 2002 as applied by subsection (6) above; and shall do so in such manner as he considers most suitable for bringing the decision to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.”
- (5) In section 16 (general provision as to reports)—
- (a) subsection (1) shall cease to have effect;
- (b) in subsection (2) the words “or of the Director” shall cease to have effect.
- (6) In section 17 (laying before Parliament and publication of reports)—
- (a) in subsections (1), (3) and (4), the words “or 13(5)” shall cease to have effect;
- (b) in subsection (4), for the words “against the public interest” there is substituted “inappropriate”;
- (c) for subsection (5) there is substituted—
- “(5) In deciding what is inappropriate for the purposes of subsection (4) the Secretary of State shall have regard to the considerations mentioned in section 244 of the Enterprise Act 2002.”
- (7) Sections 18 (information and advice about operation of Act), 21 (monopoly references by Secretary of State alone) and 24 (modification of provisions about performance of Commission’s functions) shall cease to have effect.

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- (8) In section 31 (orders and regulations)—
- (a) in subsection (1) the words “or regulations” shall cease to have effect;
  - (b) in subsection (3)—
    - (i) the words “regulations under this Act or” shall cease to have effect;
    - (ii) after “11(4)” there is inserted “, 11D”;
    - (iii) after “above” there is inserted “, or section 111(4) or (6) or 114(3)(b) or (4)(b) of the Enterprise Act 2002 as applied by section 11B(1)(c) or (f) above,”;
  - (c) subsection (4) shall cease to have effect;
  - (d) after subsection (4) there is inserted—
    - “(5) Any power of the Secretary of State to make an order under this Act—
      - (a) may be exercised so as to make different provision for different cases or different purposes; and
      - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.”
- (9) In section 33 (interpretation), for subsection (2) there is substituted—
- “(2) Unless the context otherwise requires, in this Act “Minister” includes a government department and the following expressions shall have the same meanings as they have in Part 3 of the Enterprise Act 2002—
- “business”
  - “the Commission”
  - “enactment”
  - “goods”
  - “services”
  - “supply (in relation to the supply of goods)”
  - “the supply of services”.”
- (10) For the purposes of the Scotland Act 1998 (c. 46) the amendments made by this paragraph shall be taken to be pre-commencement enactments within the meaning of that Act.

*Civil Aviation Act 1982 (c. 16)*

- 11 (1) The Civil Aviation Act 1982 is amended as follows.
- (2) In section 4 (general objectives), in subsections (3) and (4), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

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

- 12 (1) The Agricultural Marketing (Northern Ireland) Order 1982 is amended as follows.
- (2) For article 23 (action following report by Commission) there is substituted—

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### **Action following report by Competition Commission**

- “23 (1) Paragraph (5) applies in any of the following cases.
- (2) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
  - (3) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
  - (4) The third case is where—
    - (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
      - (i) certain matters indicated in the report operate against the public interest, and
      - (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
    - (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).
  - (5) The Department shall have the like power to make orders under Article 22 as if a report of a committee of investigation had contained the conclusion that the provision of the scheme in question, or the act or omission in question, is contrary to the interests of consumers of the regulated product.
  - (6) An order made by virtue of this Article in a case falling within paragraph (2) or (3) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).”
- (3) In article 42 (action following report by Commission)—
- (a) for paragraph (1) there is substituted—
 

“(1) Paragraph (1D) applies in any of the following cases.

    - (1A) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
    - (1B) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.



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(1C) The third case is where—

- (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
  - (i) certain matters indicated in the report operate against the public interest, and
  - (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
- (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).

(1D) The Department, if it thinks fit so to do—

- (a) may by order make such amendments in the scheme as it considers necessary or expedient for the purpose of rectifying the matter;
- (b) may by order revoke the scheme;
- (c) in the event of the matter being one which it is within the power of the board to rectify, may by order direct the board to take such steps to rectify the matter as may be specified in the order, and thereupon it shall be the duty of the board forthwith to comply with the order.”;
- (b) in paragraph (2) for “paragraph (1)” there is substituted “paragraph (1D)”;
- (c) in paragraph (3) for “paragraph (1)(b)(iii)” there is substituted “paragraph (1D)(c)”;
- (d) in paragraph (5)—
  - (i) for “paragraph (1)(i) or (iii)” there is substituted “paragraph (1D)(a) or (c)”;
  - (ii) for “paragraph (1)(ii)” there is substituted “paragraph (1D)(b)”;
- (e) after paragraph (5) there is inserted—

“(5A) Any order made under this Article in a case falling within paragraph (1A) or (1B) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).”

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

- 13 (1) The Telecommunications Act 1984 is amended as follows.
- (2) In section 3 (general duties of Secretary of State and Director), in subsection (3C), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
  - (3) In section 13 (licence modification references to Commission), subsections (9) and (9A) shall cease to have effect.
  - (4) After section 13 there is inserted—

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### **“13A References under section 13: time limits**

- (1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.
- (3) The Director may, if he has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
  - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) in the case of a licence granted to a particular person, send to that person a copy of what has been published by him under paragraph (a) above.

### **13B References under section 13: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

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- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (5) In section 14 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of section 15 below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for subsection (3) there is substituted—
    - “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 13 above.
    - (3A) In making any report on a reference under section 13 above the Commission must have regard to the following considerations before disclosing any information.
    - (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
    - (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
      - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
      - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.

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- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) is necessary for the purposes of the report.”
- (6) In section 47 (general functions), in subsection (4)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) for “that Director” there is substituted “the Office of Fair Trading”.
- (7) In section 48 (publication of information and advice), after subsection (3) there is inserted—
- “(3A) The Office of Fair Trading shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under this section.”
- (8) In section 50 (functions under 1973 and 1980 Acts)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (3)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “that Director” there is substituted “the Office of Fair Trading”;
  - (c) in subsection (3A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (d) in subsection (6), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (9) In section 101 (general restrictions on disclosure of information)—
- (a) in subsection (2)(b), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in subsection (3), after paragraph (o) there is inserted—
 

“(p) the Enterprise Act 2002”;
  - (c) in subsection (6)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “Part 9 of the Enterprise Act 2002 (Information)”.
- (10) In section 103 (time limits for summary proceedings)—
- (a) that section shall be renumbered as subsection (1) of that section;
  - (b) after that subsection there is inserted—
 

“(2) Subsection (1) above shall not apply for the purposes of an offence under any provision of the Enterprise Act 2002 as applied by virtue of section 13B above.”

*Airports Act 1986 (c. 31)*

- 14 (1) The Airports Act 1986 is amended as follows.
- (2) In section 44 (supplementary provisions relating to references to Commission), subsections (3) and (3A) shall cease to have effect.

(3) After section 44 there is inserted—

**“44A References under section 43: time limits**

- (1) Every reference under section 43 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 43 shall not have effect (and no action shall be taken in relation to it under section 46) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the CAA under subsection (3).
- (3) The CAA may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The CAA shall, in the case of an extension made by it under subsection (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) to the airport operator concerned and the Secretary of State.

**44B References under section 43: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes of references under section 43 as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

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- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1), have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (4) In section 45 (reports on references)—
- (a) after subsection (2) there is inserted—
    - “(2A) For the purposes of section 46(2), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (2B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 43 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for subsection (4) there is substituted—
    - “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 43.
    - (4A) In making any report on a reference under section 43 the Commission must have regard to the following considerations before disclosing any information.
    - (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
    - (4C) The second consideration is the need to exclude from disclosure (so far as practicable)—
      - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
      - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.

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- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.”
- (5) In section 56 (co-ordination of exercise of functions by CAA and Director General of Fair Trading)—
- (a) in paragraph (a)—
    - (i) for “the Director General of Fair Trading of functions under the 1973 Act” there is substituted “the Office of Fair Trading of functions under the Enterprise Act 2002”;
    - (ii) for “the Director” there is substituted “the Office of Fair Trading”;
  - (b) in paragraph (b), for “the Director” there is substituted “the Office of Fair Trading”.
- (6) In section 74 (restriction on disclosure of information)—
- (a) in subsection (2), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in subsection (3), at the end there is inserted—

“(r) the Enterprise Act 2002”.

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

- 15 (1) The Gas Act 1986 is amended as follows.
- (2) In section 4B (exceptions from sections 4AA to 4A), in subsection (3), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
  - (3) In section 24 (licence modification references to Commission)—
    - (a) subsections (7) and (7A) shall cease to have effect;
    - (b) in subsection (8), after “sections” there is inserted “24A,”.
  - (4) After section 24 there is inserted—

#### **“24A References under section 24: time limits**

- (1) Every reference under section 24 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 24 above shall not have effect (and no action shall be taken in relation to it under section 26 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.

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- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
- (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

#### **24B References under section 24: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 24 above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (5) In section 25 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—



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- “(1A) For the purposes of sections 26 and 26A below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 24 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (3) there is substituted—
- “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 24 above.
- (3A) In making any report on a reference under section 24 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”
- (6) In section 26A (Commission’s power to veto modifications following report)—
- (a) after subsection (11) there is inserted—
- “(11A) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8).
- (11B) In giving any notice under subsection (4)(a) or (6), or publishing any notice under subsection (8), the Commission must have regard to the following considerations before disclosing any information.
- (11C) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (11D) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (11E) The third consideration is the extent to which the disclosure of the information mentioned in subsection (11D)(a) or (b) is necessary for the purposes of the notice.
- (11F) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (11G) and (11H), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this section, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (11G) Section 110 shall, in its application by virtue of subsection (11F), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 26A(8) of the Gas Act 1986 in connection with the reference concerned or, if no direction has been given by the Commission under section 26A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (11H) Section 111(5)(b) shall, in its application by virtue of subsection (11F), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under section 26A(8) of the Gas Act 1986 in connection with the reference concerned or, if no direction is given by the

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Commission under section 26A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.

(11I) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (11F) above, have effect in relation to those sections as applied by virtue of that subsection.

(11J) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”;

(b) subsections (12) and (13) shall cease to have effect.

(7) In section 33 (power of Council to investigate other matters), in subsection (4), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

(8) In section 34 (general functions), in subsection (4)—

(a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”; and

(b) for “that Director” there is substituted “the Office of Fair Trading”.

(9) In section 35 (publication of information and advice), after subsection (3) there is inserted—

“(3A) The Office of Fair Trading shall consult the Authority before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Authority under this section.”

(10) In section 36A (functions with respect to competition)—

(a) subsection (1) shall cease to have effect;

(b) in subsection (3), for “the Director General of Fair Trading, the functions of that Director” there is substituted “the Office of Fair Trading, the functions of the Office of Fair Trading”;

(c) in subsection (3A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;

(d) in subsection (7), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

(11) In section 41E (references to Commission about activities which are not licensable), subsections (7) and (8) shall cease to have effect.

(12) After section 41E there is inserted—

**“41EA References under section 41E: time limits**

(1) Every reference under section 41E above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

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- (2) A report of the Competition Commission on a reference under section 41E above shall not have effect (in particular for the purposes of section 41D(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

#### **41EB References under section 41E: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 41E above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 41E above as it applies in relation

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- to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (13) In section 41F (reports on references under section 41E)—
- (a) after subsection (3) there is inserted—
- “(3A) For the purposes of section 41D(5), a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 41E as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (4) there is substituted—
- “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 41E.
- (4A) In making any report on a reference under section 41E the Competition Commission must have regard to the following considerations before disclosing any information.
- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.”

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- (14) In section 62 (exclusion of certain agreements from Restrictive Trade Practices Act 1976), for “the Director General of Fair Trading” (in both places) there is substituted “the Office of Fair Trading”.

*Consumer Protection Act 1987 (c. 43)*

- 16 (1) The Consumer Protection Act 1987 is amended as follows.
- (2) In section 25 (codes of practice), in subsection (1), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (3) In section 26 (power to make regulations), in subsection (1), for the “Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

*Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20))*

- 17 (1) The Consumer Protection (Northern Ireland) Order 1987 is amended as follows.
- (2) In Article 18 (codes of practice), in paragraph (1), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (3) In Article 19 (power to make regulations), in paragraph (1), for the “Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

*Copyright, Designs and Patents Act 1988 (c. 48)*

- 18 (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 144 (powers exercisable in consequence of report of Commission) for subsections (1) and (2) there is substituted—
- “(1) Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations) consists of or includes—
- (a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences; or
- (b) a refusal of a copyright owner to grant licences on reasonable terms.
- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.”
- (3) In section 144(3)—

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- (a) for “A Minister” there is substituted “The Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission”;
  - (b) after “he” there is inserted “or it”.
- (4) In section 238 (powers exercisable for protection of the public interest), for subsections (1) and (2) there is substituted—
- “(1) Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc.) consists of or includes—
- (a) conditions in licences granted by a design right owner restricting the use of the design by the licensee or the right of the design right owner to grant other licences, or
  - (b) a refusal of a design right owner to grant licences on reasonable terms.
- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the design right shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.”
- (5) In Schedule 2A, in paragraph 17 (powers exercisable in consequence of competition report)—
- (a) for sub-paragraphs (1) and (2) there is substituted—
- “(1) Sub-paragraph (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc.) consists of or includes—
- (a) conditions in licences granted by the owner of a performer’s property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licenses, or
  - (b) a refusal of an owner of a performer’s property rights to grant licences on reasonable terms.

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- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer’s property rights shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.”;
- (b) in sub-paragraph (3)—
- (i) for “A Minister” there is substituted “The Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading”;
- (ii) after “he” there is inserted “or it”.

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

- 19 (1) The Water Act 1989 is amended as follows.
- (2) In section 174 (general restrictions on disclosure of information)—
- (a) in subsection (2)(d), for sub-paragraph (ii) there is substituted—  
“(ii) the Office of Fair Trading;”
- (b) in subsection (3), after paragraph (lm) there is inserted—  
“(ln) the Enterprise Act 2002;”.

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

- 20 (1) The Electricity Act 1989 is amended as follows.
- (2) In section 3D (exceptions from sections 3A to 3C), in subsection (4), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (3) In section 12 (licence modification references to Commission)—
- (a) in subsection (6A), after “sections” there is inserted “12A, ”;
- (b) subsections (8) and (8A) shall cease to have effect.
- (4) After section 12 there is inserted—

#### **“12A References under section 12: time limits**

- (1) Every reference under section 12 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 12 above shall not have effect (and no action shall be taken in relation to it under section 14 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons



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why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

### **12B References under section 12: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 12 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

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- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (5) In section 13 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—
- “(1A) For the purposes of sections 14 and 14A below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 12 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (3) there is substituted—
- “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 12 above.
- (3A) In making any report on a reference under section 12 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”
- (6) In section 14A (Commission’s power to veto modifications following report)—
- (a) after subsection (11) there is inserted—
- “(11A) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8).
- (11B) In giving any notice under subsection (4)(a) or (6), or publishing any notice under subsection (8), the Commission must have regard to the following considerations before disclosing any information.

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- (11C) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (11D) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (11E) The third consideration is the extent to which the disclosure of the information mentioned in subsection (11D)(a) or (b) is necessary for the purposes of the notice.
- (11F) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (11G) and (11H), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this section, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (11G) Section 110 shall, in its application by virtue of subsection (11F), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction has been given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period;” and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

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- (11H) Section 111(5)(b) shall, in its application by virtue of subsection (11F), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction is given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (11I) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (11F) above, have effect in relation to those sections as applied by virtue of that subsection.
- (11J) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”;
- (b) subsections (12) and (13) shall cease to have effect.
- (7) In section 43 (functions with respect to competition)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (3), for “the Director General of Fair Trading, the functions of that Director” there is substituted “the Office of Fair Trading, the functions of the Office of Fair Trading”;
  - (c) in subsection (3A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (d) in subsection (6), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (8) In section 46A (power of Council to investigate other matters), in subsection (2), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (9) In section 47 (general functions), in subsection (3)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) for “that Director” there is substituted “the Office of Fair Trading”.
- (10) In section 48 (publication of information and advice), in subsection (3),—
- (a) for “The Director General of Fair Trading” there is substituted “The Office of Fair Trading”;
  - (b) for “section 124 of the 1973 Act” there is substituted “section 6 of the Enterprise Act 2002”.

- (11) In section 56C (references to Commission about activities which are not licensable), subsections (7) and (8) shall cease to have effect.
- (12) After section 56C there is inserted—

**“56CA References under section 56C: time limits**

- (1) Every reference under section 56C above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 56C above shall not have effect (in particular for the purposes of section 56B(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

**56CB References under section 56C: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 56C above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—

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- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 56C above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (13) In section 56D (reports on references under section 56C)—
- (a) after subsection (3) there is inserted—
    - “(3A) For the purposes of section 56B(5), a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 56C as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for subsection (4) there is substituted—
    - “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 56C.
    - (4A) In making any report on a reference under section 56C the Competition Commission must have regard to the following considerations before disclosing any information.
    - (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
    - (4C) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.

(4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.”

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

21 (1) The Companies Act 1989 is amended as follows.

(2) In section 47 (restrictive practices), in subsection (3)(c), for “Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

(3) In section 87 (exceptions from restrictions on disclosure), in subsection (4), for the entry relating to the Director General of Fair Trading there is substituted—

“The Office of Fair Trading.”

(4) In Schedule 14 (supervisory and qualifying bodies: restrictive practices)—

(a) in paragraph 1—

(i) in sub-paragraph (1), for “the Director General of Fair Trading (in this Schedule referred to as “the Director”)” there is substituted “the Office of Fair Trading (in this Schedule referred to as “the OFT”)” and for “Director” there is substituted “OFT”;

(ii) in sub-paragraph (2), for “Director” and “his” there is substituted “OFT” and “its” respectively;

(b) in paragraph 3—

(i) for “Director” (in each place) there is substituted “OFT”;

(ii) in sub-paragraph (1), for “he” (in both places) and “his” (in both places) there is substituted “it” and “its” respectively;

(iii) in sub-paragraph (3), for “his” there is substituted “its”;

(iv) in sub-paragraph (4), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;

and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;

(c) in paragraph 4—

(i) for “Director” (in each place) there is substituted “OFT”;

(ii) in sub-paragraph (1), for “his” there is substituted “its”;

(iii) in sub-paragraph (2), for “him” there is substituted “it”;

(iv) sub-paragraph (5) shall cease to have effect;

and in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;

(d) after paragraph 4 there is inserted—

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*“Enforcement*

- 4A (1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 4.
- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 4.
- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- (7) In this section “the court”—
- (a) in relation to England and Wales, means the High Court, and
  - (b) in relation to Scotland, means the Court of Session.
- 4B (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 4.
- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”;
- (e) in paragraph 5, for “Director”, “he” (in both places), “him” and “his” there is substituted “OFT”, “it”, “it” and “its” respectively, and, in the cross-heading before paragraph 5, for “*Director's*” there is substituted “*OFT's*”;
- (f) in paragraphs 6 and 7, for “Director” (in each place) there is substituted “OFT”;
- (g) paragraph 8 (exemption from monopoly provisions) shall cease to have effect.



*Companies (Northern Ireland) Order 1989 (S.I. 1990/593 (N.I. 5))*

- 22 (1) The Companies (Northern Ireland) Order 1989 is amended as follows.
- (2) In Article 49 (restrictive practices), in paragraph (3)(c), for “Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (3) In Schedule 14 (supervisory and qualifying bodies: restrictive practices)—
- (a) in paragraph 1—
- (i) in sub-paragraph (1), for “the Director General of Fair Trading (in this Schedule referred to as “the Director”)” there is substituted “the Office of Fair Trading (in this Schedule referred to as “the OFT”)” and for “Director” there is substituted “OFT”;
- (ii) in sub-paragraph (2), for “Director” and “his” there is substituted “OFT” and “its” respectively;
- (b) in paragraph 3—
- (i) for “Director” (in each place) there is substituted “OFT”;
- (ii) in sub-paragraph (1), for “he” (in both places) and “his” (in both places) there is substituted “it” and “its” respectively;
- (iii) in sub-paragraph (3), for “his” there is substituted “its”;
- (iv) in sub-paragraph (4), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;
- and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;
- (c) in paragraph 4—
- (i) for “Director” (in each place) there is substituted “OFT”;
- (ii) in sub-paragraph (1), for “his” there is substituted “its”;
- (iii) in sub-paragraph (2), for “him” there is substituted “it”;
- and in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;
- (d) in paragraph 5, for “Director”, “he” (in both places), “him” and “his” there is substituted “OFT”, “it”, “it” and “its” respectively, and, in the cross-heading before paragraph 5, for “*Director's*” there is substituted “*OFT's*”;
- (e) in paragraphs 6 and 7, for “Director” (in each place) there is substituted “OFT”.

*Courts and Legal Services Act 1990 (c. 41)*

- 23 (1) The Courts and Legal Services Act 1990 is amended as follows.
- (2) In section 45 (advisory and supervisory functions of Director General of Fair Trading)—
- (a) for “Director” (in each place) there is substituted “OFT”;
- (b) in subsection (3), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;
- (c) in subsection (5), for “he” and “his” there is substituted “it” and “its” respectively;
- (d) in subsection (6), for “Director's” there is substituted “OFT's”;
- (e) in subsection (7), for “him” (in both places) there is substituted “it”;
- (f) in subsection (8), for “Director's” there is substituted “its”;

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- (g) in the sidenote, for “Director General of Fair Trading” there is substituted “Office of Fair Trading”.
- (3) In section 46 (investigatory powers of Director)—
- (a) in subsection (1), for “Director” and “him” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in the sidenote, for “Director” there is substituted “OFT”;
  - (c) subsection (3) shall cease to have effect.
- (4) After section 46 there is inserted—

**“46A Enforcement of notices under section 46**

- (1) The High Court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 46(1).
- (2) An application under subsection (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under subsection (1), the High Court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Subsections (5) and (6) apply where the High Court is satisfied, after hearing any witnesses and statements as mentioned in subsection (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under section 46(1).
- (5) The High Court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the High Court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.

**46B Altering, etc. documents required to be produced under section 46**

- (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under section 46(1).
  - (2) A person who commits an offence under subsection (1) shall be liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”
- (5) In section 50 (exceptions from restrictions on disclosure), in subsection (2)(m)—
- (a) for “Director to discharge any of his” there is substituted “OFT to discharge any of its”;
  - (b) after sub-paragraph (ix) there is inserted—
    - “(x) the Enterprise Act 2002;”.
- (6) In section 69 (exemption from liability for damages etc.), in subsection (2)—

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- (a) for “Director” there is substituted “OFT”;
  - (b) after “him” there is inserted “or it”.
- (7) In section 105 (tying-in arrangements: supplemental provisions), in subsection (10), for “Director” there is substituted “OFT”.
- (8) In section 107 (tying-in: enforcement)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (5), for “him” and “he” there is substituted “it”.
- (9) In section 119(1) (interpretation)—
- (a) the definition of “the Director” shall cease to have effect; and
  - (b) after the definition of “officer” there is inserted—  
““the OFT” means the Office of Fair Trading;”.
- (10) In Schedule 4 (authorised bodies)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in paragraph 3—
    - (i) in sub-paragraph (2), for “he” there is substituted “it”;
    - (ii) in sub-paragraph (3), for “his” and “he” (in both places) there is substituted “its” and “it” respectively;
    - (iii) in sub-paragraph (4), for “him” there is substituted “it”;
    - (iv) in sub-paragraph (5), for “the Director's” there is substituted “its”;and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;
  - (c) in paragraph 12—
    - (i) in sub-paragraph (3), for “he” there is substituted “it”;
    - (ii) in sub-paragraph (4), for “his” and “he” (in both places) there is substituted “its” and “it” respectively;
    - (iii) in sub-paragraph (5), for “him” there is substituted “it”;
    - (iv) in sub-paragraph (6), for “the Director's” there is substituted “its”;and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;
  - (d) in paragraph 20—
    - (i) in sub-paragraph (2), for “he” there is substituted “it”;
    - (ii) in sub-paragraph (3), for “his” and “he” (in both places) there is substituted “its” and “it” respectively;
    - (iii) in sub-paragraph (4), for “him” there is substituted “it”;
    - (iv) in sub-paragraph (5), for “the Director's” there is substituted “its”;and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;
  - (e) in paragraph 28—
    - (i) in sub-paragraph (2), for “he” there is substituted “it”;
    - (ii) in sub-paragraph (3), for “his” and “he” (in both places) there is substituted “its” and “it” respectively;
    - (iii) in sub-paragraph (4), for “him” there is substituted “it”;
    - (iv) in sub-paragraph (5), for “the Director's” there is substituted “its”;

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and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”.

*Broadcasting Act 1990 (c. 42)*

- 24 (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 2 (regulation by Commission of provision of television services), in subsection (3)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) for “any of his or their” there is substituted “any of their”.
- (3) In section 39 (networking arrangements between holders of regional Channel 3 licences)—
- (a) in subsection (2), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in subsection (3)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “he” there is substituted “it”;
  - (c) in subsection (12)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “him” there is substituted “it”.
- (4) In section 85 (licensing functions of Authority), in subsection (4)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) for “any of his or their” there is substituted “any of their”.
- (5) In section 186 (duty of BBC to include independent productions in their television services)—
- (a) in subsection (3)—
    - (i) for “The Director General of Fair Trading (“the Director”)” there is substituted “The Office of Fair Trading (“the OFT”);”;
    - (ii) for “his” there is substituted “its”;
  - (b) in subsection (4)—
    - (i) for “the Director” there is substituted “the OFT”;
    - (ii) for “his” (in each place) there is substituted “its”;
    - (iii) for “him” there is substituted “it”;
  - (c) in subsection (5), for “Director” (in both places) there is substituted “OFT”;
  - (d) in subsection (6)—
    - (i) for “Director” (in each place) there is substituted “OFT”;
    - (ii) for “him” there is substituted “it”;
    - (iii) for “he” (in each place) there is substituted “it”;
  - (e) in subsections (7) and (8), for “the Director” there is substituted “the OFT”.
- (6) In section 187 (information to be furnished by BBC for purposes of reports under section 186)—

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- (a) in subsection (1)—
    - (i) for “Director” there is substituted “Office of Fair Trading”;
    - (ii) for “him” (in both places) there is substituted “it”;
    - (iii) for “he” there is substituted “it”;
  - (b) subsection (3) shall cease to have effect.
- (7) In section 194A (relevant agreements)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (7)(a)—
    - (i) for “he” there is substituted “it”;
    - (ii) for “his” there is substituted “its”;
  - (c) in subsection (8), for “he” (in both places) there is substituted “it”;
  - (d) in subsection (9)—
    - (i) the definition of “Director” shall cease to have effect; and
    - (ii) after the definition of “Chapter III powers” there is inserted—

““OFT” means the Office of Fair Trading;”.
- (8) In section 197 (restriction on disclosure of information)—
- (a) in subsection (2)(a)(ii)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) after “the Competition Act 1998” there is inserted “, the Enterprise Act 2002”;
  - (b) in subsection (2)(c), after “the Competition Act 1998” there is inserted “, the Enterprise Act 2002”.
- (9) In Schedule 4 (references with respect to networking arrangements)—
- (a) in paragraph 1—
    - (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “the Office of Fair Trading (“the OFT”)”;
    - (ii) for “Director” (in each place), “he” (in each place), “his” (in each place) and “Director’s” there is substituted “OFT”, “it”, “its” and “OFT’s” respectively;

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

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*“Further provision about references under paragraph 4*

- 4A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of references under paragraph 4 as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1), have effect in relation to those sections as applied by virtue of that sub-paragraph.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that sub-paragraph.”;
- (f) in paragraph 5—
- (i) for “Director” (in each place) there is substituted “OFT”;
  - (ii) sub-paragraph (5) shall cease to have effect;
  - (iii) after sub-paragraph (5) there is inserted—
- “(5A) For the purposes of paragraph 6, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with

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the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

- (5B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 4 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (5C) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 4.
- (5D) In making any report on a reference under paragraph 4 the Competition Commission must have regard to the following considerations before disclosing any information.
- (5E) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (5F) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5G) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5F)(a) or (b) is necessary for the purposes of the report.”;
- (g) in paragraph 6, for “Director” (in each place) there is substituted “OFT”;
- (h) in paragraph 7, for “Director” (in each place), “he” (in each place) and “him” there is substituted “OFT”, “it” and “it” respectively, and, in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;
- (i) in paragraph 8—
- (i) for “Director” (in each place) there is substituted “OFT”;
  - (ii) in sub-paragraph (1)(b), for “him” there is substituted “the OFT” and for “he” there is substituted “it”;
  - (iii) sub-paragraphs (3) and (4) shall cease to have effect;
- (j) after paragraph 8 there is inserted—

#### *“Enforcement*

- 8A (1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise

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failed, without reasonable excuse, to comply with a notice under paragraph 8(1).

- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 8(1).
- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- (7) In this section “the court”—
  - (a) in relation to England and Wales or Northern Ireland, means the High Court, and
  - (b) in relation to Scotland, means the Court of Session.

- 8B
- (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 8(1).
  - (2) A person who commits an offence under sub-paragraph (1) shall be liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

*False or misleading information*

- 8C
- (1) A person commits an offence if—
    - (a) he supplies any information to the OFT or the Competition Commission in connection with any of their functions under this Schedule;
    - (b) the information is false or misleading in a material respect; and
    - (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.
  - (2) A person commits an offence if he—



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- (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
  - (b) recklessly supplies any information to another person which is false or misleading in a material respect;
- knowing that the information is to be used for the purpose of supplying information to the OFT or the Competition Commission in connection with any of their functions under this Schedule.
- (3) A person who commits an offence under sub-paragraph (1) or (2) shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) This paragraph shall not have effect in relation to the supplying of information to the Competition Commission in connection with its functions under any provision of the Enterprise Act 2002 as applied by virtue of paragraph 4A.”;
- (k) in paragraph 9, for “Director” and “his” (in each place) there is substituted “OFT” and “its” respectively, and, in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;
- (l) in paragraph 10—
  - (i) the definition of “the Director” shall cease to have effect;
  - (ii) after the definition of “the ITC” there is inserted—

““the OFT” means the Office of Fair Trading.”

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

- 25 (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 2 (general duties with respect to water industry), in subsection (6B), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading (in this Act referred to as “the OFT”)”.
  - (3) In section 12(5) (determinations under conditions of appointment) for “the 1973 Act” there is substituted “the Enterprise Act 2002”.
  - (4) In section 14 (conditions of appointment: modification references to Commission), subsections (7) and (7A) shall cease to have effect.
  - (5) After section 14 there is inserted—

#### **“14A References under section 14: time limits**

- (1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period

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specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.

- (3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
  - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by him under paragraph (a) above to the company whose appointment is mentioned in the reference.

#### **14B References under section 14: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular,

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provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”

(6) In section 15 (reports on modification references)—

(a) after subsection (1) there is inserted—

“(1A) For the purposes of section 16 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 14 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;

(b) for subsection (3) there is substituted—

“(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 14 above.

(3A) In making any report on a reference under section 14 above the Competition Commission must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”

(7) In section 27 (general duty of Director to keep matters under review), in subsection (4)—

- (a) for “the Director General of Fair Trading” there is substituted “the OFT”;
- (b) for “that Director” there is substituted “the OFT”.

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- (8) In section 31 (functions of Director with respect to competition)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (3), for “the Director General of Fair Trading, the functions of that Director” there is substituted “the OFT, the functions of the OFT”;
  - (c) in subsection (4A), for “the Director General of Fair Trading” there is substituted “the OFT”;
  - (d) in subsection (8), for “the Director General of Fair Trading” there is substituted “the OFT”.
- (9) In section 201 (publication of certain information and advice), at the end there is inserted—
- “(4) The OFT shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under subsection (2) of this section.”
- (10) In section 206 (restriction on disclosure of information), in subsection (9A)—
- (a) for “the Director General of Fair Trading” there is substituted “the OFT”;
  - (b) for “sections 55 and 56 of that Act (disclosure)” there is substituted “Part 9 of the Enterprise Act 2002 (Information)”.
- (11) In section 219 (general interpretation), in subsection (1), after the definition of “notice” there is inserted—
- ““the OFT” means the Office of Fair Trading;”.
- (12) In Part 1 of Schedule 15 (disclosure of information)—
- (a) in Part 1, for the entry relating to the Director General of Fair Trading there is substituted—
 

“The OFT.”;
  - (b) in Part 2, after the entry relating to Part I of the Transport Act 2000, there is inserted—
 

“The Enterprise Act 2002.”

*Water Resources Act 1991 (c. 57)*

- 26 (1) The Water Resources Act 1991 is amended as follows.
- (2) In Schedule 24 (disclosure of information)—
- (a) in Part 1, for the entry relating to the Director General of Fair Trading there is substituted—
 

“The Office of Fair Trading.”;
  - (b) in Part 2, after the entry relating to Part I of the Transport Act 2000, there is inserted—
 

“The Enterprise Act 2002.”

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

- 27 (1) The Tribunals and Inquiries Act 1992 is amended as follows.

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- (2) In section 11 (appeals from certain tribunals), in subsection (6), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (3) In section 14 (restricted application of Act in relation to certain tribunals), in subsection (1)(b), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (4) In Part 1 of Schedule 1 (tribunals under direct supervision of council), in column 2—
  - (a) for paragraph 9A there is substituted—

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“9A. The Competition Appeal Tribunal established under section 12 of the Enterprise Act 2002.”;

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- (b) for paragraph 17 there is substituted—

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“17. The Office of Fair Trading in respect of its functions under the Consumer Credit Act 1974 and the Estate Agents Act 1979, and any member of its staff authorised to exercise those functions.”

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*Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))*

- 28 (1) The Electricity (Northern Ireland) Order 1992 is amended as follows.
- (2) In Article 15 (licence modification references to Commission) paragraphs (8) and (8A) shall cease to have effect.
  - (3) After Article 15 there is inserted—

**References under Article 15: time limits**

- “15A(1) Every reference under Article 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under Article 15 shall not have effect (and no action shall be taken in relation to it under Article 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under paragraph (3).
  - (3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
  - (4) No more than one extension is possible under paragraph (3) in relation to the same reference.
  - (5) The Director shall, in the case of an extension made by him under paragraph (3)—

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- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by him under subparagraph (a) to the licence holder.

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

15B (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 15 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—

- (a) subsection (2) were omitted; and
- (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—

- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
- (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
- (c) the words “by this Part” were omitted.

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.

(5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.”

(4) In Article 16 (reports on licence modification references)—

(a) after paragraph (1) there is inserted—

“(1A) For the purposes of Article 17, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group

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constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for paragraph (3) there is substituted—
- “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 15.
- (3A) In making any report on a reference under Article 15 the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (3C)(a) or (b) is necessary for the purposes of the report.”
- (5) In Article 46 (functions with respect to competition)—
- (a) paragraph (1) shall cease to have effect;
- (b) in paragraph (3), for “the Director General of Fair Trading, the functions of that Director” there is substituted “the Office of Fair Trading, the functions of the Office of Fair Trading”;
- (c) in paragraph (3A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
- (d) in paragraph (6), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (6) In Article 50 (general functions), in paragraph (3)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
- (b) for “that Director” there is substituted “the Office of Fair Trading”.
- (7) In Article 51 (publication of information and advice), in paragraph (3)—
- (a) for “The Director General of Fair Trading” there is substituted “The Office of Fair Trading”;

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- (b) for “section 124 of the 1973 Act” there is substituted “section 6 of the Enterprise Act 2002”.

*Osteopaths Act 1993 (c. 21)*

- 29 (1) The Osteopaths Act 1993 is amended as follows.
- (2) In section 33(2) (competition and anti-competitive practices)—
- (a) for the words from the beginning to “orders” there is substituted “Schedule 8 to the Enterprise Act 2002 (provision that may be contained in enforcement orders)”;
- (b) for “a competition” there is substituted “an enforcement”.
- (3) After section 33(2) there is inserted—
- “(2A) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in sections 160(4)(a), 161(3)(a) and 164(1) of that Act shall be construed accordingly.”
- (4) In section 33(3), for “A competition” there is substituted “An enforcement”.
- (5) For section 33(4) there is substituted—
- “(4) In this section “an enforcement order” means an order under—
- (a) section 160 of the Enterprise Act 2002 (orders following failure to fulfil final undertakings); or
- (b) section 161 of that Act (final orders following market investigation reports).”
- (6) For section 33(5) there is substituted—
- “(5) For the purposes of an enforcement order section 86(3) of the Enterprise Act 2002 as applied by section 164(2)(a) of that Act (power to apply orders to existing agreements) shall have effect in relation to a regulatory provision as it has effect in relation to an agreement.”

*Railways Act 1993 (c. 43)*

- 30 (1) The Railways Act 1993 is amended as follows.
- (2) In section 4 (general duties of the Secretary of State and the Regulator)—
- (a) in subsection (2)(a), the words from “in cases where” to “market” shall cease to have effect;
- (b) in subsection (7B), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
- (c) subsection (8) shall cease to have effect.
- (3) In section 13 (licence modification references to Commission)—
- (a) in subsection (1A), after “section” in the first place where it appears there is inserted “, section 13A below”;
- (b) subsections (8) and (8A) shall cease to have effect.
- (4) After section 13 there is inserted—



### **“13A References under section 13: time limits**

- (1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the appropriate authority under subsection (3) below.
- (3) The appropriate authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The appropriate authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence.

### **13B References under section 13: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—

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- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
    - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
    - (c) the words “by this Part” were omitted.
  - (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 13 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
  - (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders), shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by those subsections.
  - (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (5) In section 14 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of sections 15 to 15B below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for subsection (3) there is substituted—
    - “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 13 above.
    - (3A) In making any report on a reference under section 13 above the Competition Commission must have regard to the following considerations before disclosing any information.
    - (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
    - (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”
- (6) In section 15C (provisions supplementary to Commission's power to veto modifications following report), for subsections (1) and (2) there is substituted—
  - “(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15A(4) or 15B(3) above.
  - (2) In giving any notice under section 15A(4) or 15B(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
  - (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
  - (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—
    - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
    - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
  - (2C) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2B)(a) or (b) above is necessary for the purposes of the notice.
  - (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2E) and (2F) below, for the purposes of any investigation by the Competition Commission for the purposes of the exercise of its functions under section 15A or 15B above, as they apply for the purposes of any investigation on references under that Part—
    - (a) section 109 (attendance of witnesses and production of documents etc.);
    - (b) section 110 (enforcement of powers under section 109: general);
    - (c) section 111 (penalties);
    - (d) section 112 (penalties: main procedural requirements);
    - (e) section 113 (payments and interest by instalments);
    - (f) section 114 (appeals in relation to penalties);
    - (g) section 115 (recovery of penalties); and
    - (h) section 116 (statement of policy).

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- (2E) Section 110 shall, in its application by virtue of subsection (2D) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under section 15B(5) of the Railways Act 1993 of the modifications made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of subsection (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a copy of the modifications made by the Commission in connection with the reference concerned is sent to the Regulator under section 15B(5) of the Railways Act 1993 or, if no direction is given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.
- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 15A and 15B above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those subsections.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (7) In section 22 (amendment of access agreements), in subsection (6A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (8) In section 66 (amendments of the Fair Trading Act 1973)—
- (a) for subsection (3) there is substituted—
- “(3) For the purposes of Part 3 of the Enterprise Act 2002 (merger references), where a person enters into a franchise agreement as a franchisee, there shall be taken to be brought under his control an

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- enterprise engaged in the supply of the railway services to which the agreement relates.”;
- (b) for subsection (6) there is substituted—
- “(6) Expressions used in subsection (3) above and in Part 3 of the Enterprise Act 2002 have the same meaning in that subsection as they have in that Part.”
- (9) In section 67 (respective functions of the Regulator and the Director General of Fair Trading, and functions of the Competition Commission)—
- (a) subsection (1) shall cease to have effect;
- (b) in subsections (3), (3A) and (8), for “the Director” (in each place) there is substituted “the OFT”;
- (c) in the sidenote, for “the Director General of Fair Trading” there is substituted “OFT”.
- (10) In section 69 (general functions), in subsection (3), for “the Director” (in both places) there is substituted “the OFT”.
- (11) In section 71 (publication of information and advice), in subsection (3)—
- (a) for “The Director” there is substituted “The OFT”;
- (b) for “section 124 of the 1973 Act” there is substituted “section 6 of the Enterprise Act 2002”.
- (12) In section 74(7) (annual and other reports of the Regulator), for “Section 125(1) of the 1973 Act (annual and other reports)” there is substituted “Paragraph 12A(1) of Schedule 7 to the Competition Act 1998 (annual reports of the Competition Commission)”.
- (13) In section 83(1)—
- (a) the definition of “the Director” shall cease to have effect; and
- (b) after the definition of “notice period” there is inserted—
- ““the OFT” means the Office of Fair Trading;”.
- (14) In section 145 (general restrictions on disclosure of information)—
- (a) in subsection (2)(b), for paragraph (ii) there is substituted—
- “(ii) the Office of Fair Trading;”;
- (b) in subsection (3), after paragraph (qr) there is inserted—
- “(qs) the Enterprise Act 2002;”
- (c) in subsection (6A)—
- (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
- (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “Part 9 of the Enterprise Act 2002 (Information)”.
- (15) In Schedule 4A (review of access charges by Regulator)—
- (a) for paragraph 10 there is substituted—

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*“References under paragraph 9: time limits*

- 10 (1) Every reference under paragraph 9 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under paragraph 9 above shall not have effect (and no action shall be taken in relation to it under paragraph 12 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Regulator under sub-paragraph (3) below.
- (3) The Regulator may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under sub-paragraph (3) above in relation to the same reference.
- (5) The Regulator shall, in the case of an extension made by him under sub-paragraph (3) above—
- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by him under paragraph (a) above to the persons on whom a copy of the review notice was served.

*References under paragraph 9: application of Enterprise Act 2002*

- 10A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
- (a) subsection (2) were omitted; and

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- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.”;
- (b) in paragraph 11—
  - (i) after sub-paragraph (4) there is inserted—
    - “(4A) For the purposes of paragraphs 12 to 14 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (4B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 9 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (ii) for sub-paragraph (5) there is substituted—
    - “(5) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 9 above.

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- (5A) In making any report on a reference under paragraph 9 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (5B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (5C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5D) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5C)(a) or (b) above is necessary for the purposes of the report.”;
- (c) in paragraph 15, for sub-paragraphs (1) and (2) there is substituted—
- “(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.
  - (2) In giving any notice under paragraph 13(4) or 14(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (2B)(a) or (b) above is necessary for the purposes of the notice.



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- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2E) and (2F) below, in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under paragraph 13 or 14 above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of sub-paragraph (2D) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a copy of the relevant changes made by the Commission in connection with the reference concerned is sent to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.

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- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1) (a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.”

*Chiropractors Act 1994 (c. 17)*

- 31 (1) The Chiropractors Act 1994 is amended as follows.
- (2) In section 33(2) (competition and anti-competitive practices)—
- (a) for the words from the beginning to “orders)” there is substituted “Schedule 8 to the Enterprise Act 2002 (provision that may be contained in enforcement orders)”;
  - (b) for “a competition” there is substituted “an enforcement”.
- (3) After section 33(2) there is inserted—
- “(2A) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in sections 160(4)(a), 161(3)(a) and 164(1) of that Act shall be construed accordingly.”
- (4) In section 33(3), for “A competition” there is substituted “An enforcement”.
- (5) For section 33(4) there is substituted—
- “(4) In this section “an enforcement order” means an order under—
- (a) section 160 of the Enterprise Act 2002 (orders following failure to fulfil final undertakings); or
  - (b) section 161 of that Act (final orders following market investigation reports).”
- (6) For section 33(5) there is substituted—
- “(5) For the purposes of an enforcement order section 86(3) of the Enterprise Act 2002 as applied by section 164(2)(a) of that Act (power to apply orders to existing agreements) shall have effect in relation to a regulatory provision as it has effect in relation to an agreement.”

*Coal Industry Act 1994 (c. 21)*

- 32 (1) The Coal Industry Act 1994 is amended as follows.
- (2) In section 59 (information to be kept confidential by the Authority)—
- (a) in subsection (3)(e)(v), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in subsection (4), after paragraph (n) there is inserted—  
“*(o) the Enterprise Act 2002.*”

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

- 33 (1) The Airports (Northern Ireland) Order 1994 is amended as follows.
- (2) In Article 35 (supplementary provisions relating to references to the Commission), paragraphs (3) and (3A) shall cease to have effect.
- (3) After Article 35 there is inserted—

**References under Article 34: time limits**

- “35A(1) Every reference under Article 34 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under Article 34 shall not have effect (and no action shall be taken in relation to it under Article 37) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the CAA under paragraph (3).
- (3) The CAA may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under paragraph (3) in relation to the same reference.
- (5) The CAA shall, in the case of an extension made by it under paragraph (3)—
- (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under sub-paragraph (a) to the airport operator concerned and the Department.

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

- 35B(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 34 as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);

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- (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.
- (5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.”
- (4) In Article 36 (reports on references)—
- (a) after paragraph (2) there is inserted—
    - “(2A) For the purposes of Article 37(2), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (2B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 34 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for paragraph (4) there is substituted—
    - “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under Article 34.

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- (4A) In making any report on a reference under Article 34 the Commission must have regard to the following considerations before disclosing any information.
- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4C)(a) or (b) is necessary for the purposes of the report.”
- (5) In Article 47 (co-ordination of exercise of functions by CAA and Director General of Fair Trading)—
- (a) in paragraph (a)—
    - (i) for “the Director General of Fair Trading of functions under the 1973 Act or the 1980 Act” there is substituted “the Office of Fair Trading of functions under the Enterprise Act 2002”;
    - (ii) for “the Director” there is substituted “the Office of Fair Trading”;
  - (b) in paragraph (b), for “the Director” there is substituted “the Office of Fair Trading”.
- (6) In Article 49 (restriction on disclosure of information)—
- (a) in paragraph (2), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in paragraph (3), at the end there is inserted—
    - “(t) the Enterprise Act 2002”.

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

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

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

- 35 (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (7)(b)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;

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- (b) for “he” there is substituted “it”.
- (3) In section 22 (restriction of functions in relation to competition etc.)—
  - (a) subsection (1) shall cease to have effect;
  - (b) in subsection (3), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (c) in subsection (4)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “the Director” there is substituted “the Office of Fair Trading”.

*Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))*

- 36 (1) The Gas (Northern Ireland) Order 1996 is amended as follows.
- (2) In Article 15 (licence modification references to Commission)—
  - (a) paragraphs (9) and (9A) shall cease to have effect;
  - (b) in paragraph (10), after “Articles” there is inserted “15A,”.
- (3) After Article 15 there is inserted—

**References under Article 15: time limits**

- “15A(1) Every reference under Article 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under Article 15 shall not have effect (and no action shall be taken in relation to it under Article 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under paragraph (3).
- (3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under paragraph (3) in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under paragraph (3)—
  - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by him under sub-paragraph (a) to the holder of the licence or, as the case may be, the relevant licence holders.

### References under Article 15: powers of investigation

- 15B (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 15 as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.
- (5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.”
- (4) In Article 16 (reports on licence modification references)—
- (a) after paragraph (1) there is inserted—
    - “(1A) For the purposes of Article 17, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 15 as the conclusions of the Competition Commission, the report shall, if the

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- member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for paragraph (3) there is substituted—
- “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 15.
- (3A) In making any report on a reference under Article 15 the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (3C)(a) or (b) is necessary for the purposes of the report.”
- (5) In Article 23 (functions with respect to competition)—
- (a) paragraph (1) shall cease to have effect;
- (b) in paragraph (3), for “the Director General of Fair Trading, the functions of that Director” there is substituted “the Office of Fair Trading, the functions of the Office of Fair Trading”;
- (c) in paragraph (3A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
- (d) in paragraph (6), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (6) In Article 27 (general functions), in paragraph (3)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”; and
- (b) for “that Director” there is substituted “the Office of Fair Trading”.
- (7) In Article 28 (publication of information and advice), for paragraph (3) there is substituted—
- “(3A) The Office of Fair Trading shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under this Article.”
- (8) In Article 41(2) (exclusion of certain agreements from Restrictive Trade Practices Act 1976), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.



*Data Protection Act 1998 (c. 29)*

- 37 (1) The Data Protection Act 1998 is amended as follows.
- (2) In section 31 (regulatory activity), in subsection (5)(a), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.

*Competition Act 1998 (c. 41)*

- 38 (1) The 1998 Act is amended as follows.
- (2) In section 3(4)(b) (excluded agreements), for “the Fair Trading Act 1973” there is substituted “the Enterprise Act 2002”.
- (3) In section 4 (individual exemptions), for “Director” (in each place), “him” and “he” there is substituted “OFT”, “it” and “it” respectively.
- (4) In section 5 (cancellation etc. of individual exemptions), for “Director” (in each place), “he” (in each place) and “his” (in both places) there is substituted “OFT”, “it” and “its” respectively.
- (5) In section 6 (block exemptions)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (6)(c), for “he” there is substituted “it”.
- (6) In section 7 (block exemptions: opposition), for “Director” (in each place), and “his” (in both places) there is substituted “OFT” and “its” respectively.
- (7) In section 8 (block exemptions: procedure)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “his”, “he” and “him” there is substituted “its”, “it” and “it” respectively;
  - (c) in subsection (3), for “he” there is substituted “it”.
- (8) In section 10 (parallel agreements)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (8), for “his”, “him” and “he” there is substituted “its”, “it” and “it” respectively.
- (9) In section 12 (requests for Director to examine agreements), for “Director” (in each place) there is substituted “OFT”.
- (10) In section 13 (notification for guidance), for “Director” (in each place), “him”, “his” (in both places) and “he” there is substituted “OFT”, “the OFT”, “its” and “it” respectively.
- (11) In section 14 (notification for a decision), for “Director” (in each place) and “him” there is substituted “OFT” and “the OFT” respectively.
- (12) In section 15 (effect of guidance), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” (in each place) there is substituted “OFT”, “it”, “its” and “it” respectively.
- (13) In section 16 (effect of a decision that the Chapter 1 prohibition has not been infringed), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” there is substituted “OFT”, “it”, “its” and “it” respectively.

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- (14) In section 20 (requests for Director to consider conduct), for “Director” (in each place) there is substituted “OFT”.
- (15) In section 21 (notification for guidance), for “Director” (in both places), “him” and “his” there is substituted “OFT”, “the OFT” and “its” respectively.
- (16) In section 22 (notification for a decision), for “Director” (in both places) and “him” there is substituted “OFT” and “the OFT” respectively.
- (17) In section 23 (effect of guidance), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” (in both places) there is substituted “OFT”, “it”, “its” and “it” respectively.
- (18) In section 24 (effect of a decision that the Chapter 2 prohibition has not been infringed), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” there is substituted “OFT”, “it”, “its” and “it” respectively.
- (19) In section 25 (Director’s power to investigate), for “Director’s” and “Director” there is substituted “OFT’s” and “OFT” respectively.
- (20) In section 26 (powers when conducting investigations)—
- (a) in subsection (1), for “Director”, “him” (in both places) and “he” there is substituted “OFT”, “it” and “it” respectively;
  - (b) in subsection (5), for “Director” there is substituted “OFT”.
- (21) In section 27 (power to enter premises without a warrant)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3), for “he” (in both places) there is substituted “it”.
- (22) In section 28 (power to enter premises under a warrant)—
- (a) in subsection (1), for “Director” (in both places) there is substituted “OFT”;
  - (b) in subsection (2)—
    - (i) for “Director” there is substituted “OFT”;
    - (ii) for “his officers whom he” there is substituted “the OFT’s officers whom the OFT”.
- (23) In section 31 (decisions following an investigation), for “Director” (in both places) there is substituted “OFT”.
- (24) In section 32 (directions in relation to agreements)—
- (a) in subsection (1), for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in subsection (2), for “Director’s”, “his” and “him” there is substituted “OFT’s”, “its” and “it” respectively.
- (25) In section 33 (directions in relation to conduct)—
- (a) in subsection (1), for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in subsection (2), for “Director’s”, “his” and “him” there is substituted “OFT’s”, “its” and “it” respectively.
- (26) In section 34 (enforcement of directions), for “Director” there is substituted “OFT”.

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

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and in the cross-heading before that section, for “*Director's*” there is substituted “*OFT's*”.

- (39) In section 52 (advice and information)—
- (a) in subsections (2) and (3), for “Director” there is substituted “OFT”;
  - (b) in subsection (4), for “Director” and “him” there is substituted “OFT” and “it” respectively;
  - (c) in subsection (5), for “Director” and “he” there is substituted “OFT” and “it” respectively;
  - (d) in subsection (6), for “Director” and “he” (in both places) there is substituted “OFT” and “it” respectively;
  - (e) in subsection (8), for “Director” there is substituted “OFT”.
- (40) In section 53 (fees), for “Director” (in each place) and “him” there is substituted “OFT” and “it” respectively.
- (41) In section 54 (regulators)—
- (a) in subsection (1), for the words from “any person” to the end of the subsection there is substituted “—
    - (a) the Director General of Telecommunications;
    - (b) the Gas and Electricity Markets Authority;
    - (c) the Director General of Electricity Supply for Northern Ireland;
    - (d) the Director General of Water Services;
    - (e) the Rail Regulator;
    - (f) the Director General of Gas for Northern Ireland; and
    - (g) the Civil Aviation Authority.”;
  - (b) for “Director” (in each place) there is substituted “OFT”.
- (42) In section 57 (defamation), for “Director” and “his” there is substituted “OFT” and “its” respectively.
- (43) In section 58 (findings of fact by Director)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) for “a Director's” (in both places) there is substituted “an OFT's”;
- and in the cross-heading before that section, for “*Director*” there is substituted “*OFT*”.
- (44) In section 59 (interpretation of Part 1) —
- (a) in subsection (1), the definition of “the Director” shall cease to have effect and after the definition of “officer” there is inserted—
 

““the OFT” means the Office of Fair Trading;”;
  - (b) in subsection (4), for “Director” and “he” there is substituted “OFT” and “it” respectively.
- (45) In section 60 (principles to be applied in determining questions), for “Director” (in both places) there is substituted “OFT”.
- (46) In section 61 (introduction)—
- (a) in subsection (1)—

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- (i) in the definition of “authorised officer”, for “Director” there is substituted “OFT”;
  - (ii) the definition of “the Director” shall cease to have effect;
  - (iii) after the definition of “Commission investigation” there is inserted—
    - ““the OFT” means the Office of Fair Trading;”;
  - (iv) for ““Director’s investigation” means an investigation conducted by the Director” there is substituted ““OFT’s investigation” means an investigation conducted by the OFT”;
  - (v) for ““Director’s special investigation” means a Director’s” there is substituted ““OFT’s special investigation” means an OFT’s”;
  - (vi) in the definition of “premises”, for “a Director’s” there is substituted “an OFT’s”;
- (b) in subsection (2)—
    - (i) for “a Director’s” there is substituted “an OFT’s”;
    - (ii) for “Director” there is substituted “OFT”;
  - (c) in subsection (3), for “Director” there is substituted “OFT”.
- (47) In section 62 (power to enter premises: Commission investigation)—
- (a) in subsection (1), for “Director” there is substituted “OFT”, and
  - (b) in subsection (5)—
    - (i) in paragraph (a), for “Director” there is substituted “OFT”;
    - (ii) in paragraph (b), for “his officers whom he” there is substituted “the OFT’s officers whom the OFT”.
- (48) In section 63 (power to enter premises: Director’s special investigations)—
- (a) in subsection (1), for “Director, that a Director’s” there is substituted “OFT, that an OFT’s”;
  - (b) in subsections (2) to (4), for “A Director’s” and “Director” there is substituted “An OFT’s” and “OFT” respectively;
  - (c) in subsection (5), for “Director” there is substituted “OFT”;
  - (d) in the sidenote, for “Director’s” there is substituted “OFT’s”.
- (49) In section 71 (regulations, orders and rules), in subsection (4), after paragraph (c) there is inserted—
- “(ca) section 45(8),”.
- (50) In Schedule 1 (exclusions: mergers and concentrations)—
- (a) in paragraph 1—
    - (i) in sub-paragraph (1), for the words from “Part V” to “1973 Act” there is substituted “Part 3 of the Enterprise Act 2002 (“the 2002 Act”);
    - (ii) in sub-paragraph (4), for “Section 65 of the 1973 Act” there is substituted “Section 26 of the 2002 Act”;
  - (b) in paragraph 2—
    - (i) in sub-paragraph (1)(a), for “Part V of the 1973 Act” there is substituted “Part 3 of the 2002 Act”;
    - (ii) in sub-paragraph (2), for “Section 65 of the 1973 Act” there is substituted “Section 26 of the 2002 Act”;

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- (c) in paragraph 4—
    - (i) for “Director” (in each place) there is substituted “OFT”;
    - (ii) in sub-paragraph (2), for “he” (in both places) and “him” there is substituted “it” and “the OFT” respectively;
    - (iii) in sub-paragraph (5), for “he” (in both places) there is substituted “it”;
  - (d) in paragraph 5, for paragraphs (a) to (d) there is substituted—
    - “(a) the OFT or (as the case may be) the Secretary of State has published its or his decision not to make a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;
    - (b) the OFT or (as the case may be) the Secretary of State has made a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a relevant merger situation or (as the case may be) a special merger situation;
    - (c) the agreement does not fall within paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 26 of the 2002 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
    - (d) the OFT has made a reference to the Competition Commission under section 32 of the Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of any two or more water enterprises of the kind to which that section applies.”
- (51) In Schedule 3 (general exclusions)—
- (a) in paragraph 2—
    - (i) for “Director” (in each place) there is substituted “OFT”;
    - (ii) in sub-paragraph (4), for “he” (in both places) and “him” there is substituted “it” and “the OFT” respectively;
    - (iii) in sub-paragraph (7), for “if he” and “he is” there is substituted “if it” and “the OFT is” respectively;
  - (b) in paragraph 9—
    - (i) for “Director” (in each place) there is substituted “OFT”;
    - (ii) in sub-paragraph (4), for “he” (in both places) and “him” there is substituted “it” and “the OFT” respectively;
    - (iii) in sub-paragraph (7), for “he” (in both places) there is substituted “it”.
- (52) In Schedule 5 (notification under Chapter 1: procedure)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in paragraph 3, for “he” (in the first place) and “his” there is substituted “it” and “its” respectively;
  - (c) in paragraph 5(2)—

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- (i) for “he thinks” there is substituted “it thinks”;
  - (ii) for “bringing it” there is substituted “bringing the application”;
  - (iii) for “he is” there is substituted “the OFT is”;
  - (iv) the words “for him” shall cease to have effect;
  - (d) in paragraph 5(3), for “him” there is substituted “it”;
  - (e) in paragraph 6, for “he” and “his” (in both places) there is substituted “it” and “its” respectively.
- (53) In Schedule 6 (notification under Chapter 2: procedure)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in paragraph 3(1) and (2), for “he” there is substituted “it”;
  - (c) in paragraph 5(2)—
    - (i) for “he thinks” there is substituted “it thinks”;
    - (ii) for “bringing it” there is substituted “bringing the application”;
    - (iii) for “he is” there is substituted “the OFT is”;
    - (iv) the words “for him” shall cease to have effect;
  - (d) in paragraph 5(3), for “him” there is substituted “it”;
  - (e) in paragraph 6, for “he” and “his” (in both places) there is substituted “it” and “its” respectively.
- (54) In Schedule 8 (appeals)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in paragraph 2(2)(c), for “Director’s exercise of his” there is substituted “OFT’s exercise of its”;
  - (c) in paragraph 3(2)(d) and (e), for “himself” there is substituted “itself”.
- (55) In Schedule 9 (Director’s rules), for “Director” (in each place), “he” (in each place), “Director’s” (in each place) and “him” there is substituted “OFT”, “it”, “OFT’s” and “it” respectively.

*Greater London Authority Act 1999 (c. 29)*

- 39 (1) The Greater London Authority Act 1999 is amended as follows.
- (2) In section 235 (restrictions on disclosure of information)—
- (a) in subsection (2)(c), for sub-paragraph (ii) there is substituted—  
“(ii) the Office of Fair Trading;”;
  - (b) in subsection (3), after paragraph (rr) there is inserted—  
“(rs) the Enterprise Act 2002;”.

*Financial Services and Markets Act 2000 (c. 8)*

- 40 (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 159(1) (interpretation of Chapter 3 of Part 10), for the definition of “Director” there is substituted—  
““OFT” means the Office of Fair Trading;”.
- (3) In section 160 (reports by Director General of Fair Trading)—

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- (a) for “Director” (in each place), “he” (in each place) and “him” there is substituted “OFT”, “the OFT” and “it” respectively;
  - (b) in the sidenote, for “Director General of Fair Trading” there is substituted “OFT”.
- (4) In section 161 (power of Director to request information), for “Director” (in each place) and “him” (in each place) there is substituted “OFT” and “it” respectively.
- (5) In section 162 (consideration by Competition Commission), for “Director” (in both places) and “he” there is substituted “OFT” and “the OFT” respectively.
- (6) In section 194 (general grounds on which power of intervention is exercisable), in subsection (3), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (7) In section 203 (power to prohibit the carrying on of Consumer Credit Act business)—
- (a) in subsection (1)—
    - (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “the Office of Fair Trading (“the OFT”)”;
    - (ii) for “he” there is substituted “it”;
  - (b) in subsection (2), for “Director” and “he” there is substituted “OFT” and “it” respectively;
  - (c) in subsections (6) and (7), for “Director” there is substituted “OFT”;
- and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”.
- (8) In section 204 (power to restrict the carrying on of Consumer Credit Act business), for “Director” (in each place) and “him” there is substituted “OFT” and “it” respectively.
- (9) In section 295 (notification), for “Director” there is substituted “OFT”.
- (10) In section 303 (initial report by Director)—
- (a) in subsection (1), for “Director” there is substituted “OFT”;
  - (b) in subsection (2), for “Director”, “him” and “his” there is substituted “OFT”, “the OFT” and “its” respectively;
  - (c) in subsection (3), for “Director” and “him” (in both places) there is substituted “OFT” and “it” respectively;
  - (d) in subsection (4), for “Director’s”, “he” and “his” there is substituted “OFT’s”, “it” and “its” respectively;
  - (e) in subsection (5), for “Director” and “he” there is substituted “OFT” and “the OFT” respectively;
  - (f) in the sidenote, for “Director” there is substituted “OFT”;
- and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”.
- (11) In section 304—
- (a) for “Director” (in each place) and “he” (in each place) there is substituted “OFT” and “the OFT” respectively;
  - (b) in subsection (5)(b), for “him” there is substituted “the OFT”.
- (12) In section 305 (investigations by Director), for “Director” (in each place) and “him” (in each place) there is substituted “OFT” and “it” respectively.



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- (13) In section 306 (consideration by Competition Commission), for “Director’s”, “Director” (in each place) and “him” (in each place) there is substituted “OFT’s”, “OFT” and “the OFT” respectively.
- (14) In—
- (a) section 307 (recognition orders: role of the Treasury), and
  - (b) section 310 (procedure on exercise of certain powers by the Treasury),
- for “Director” there is substituted “OFT”.
- (15) In section 313(1) (interpretation of Part 18), for the definition of “Director” there is substituted—
- ““OFT” means the Office of Fair Trading;”.
- (16) In section 399 (misleading the Director General of Fair Trading)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
  - (b) in the sidenote, for “the Director General of Fair Trading” there is substituted “the OFT”.
- (17) In section 401 (proceedings for offences), in subsection (4), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (18) In section 427(3)(a) (transitional provisions), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (19) In Schedule 3 (EEA passport rights)—
- (a) in paragraph 15(3), for “the Director General of Fair Trading” and “him” there is substituted “the Office of Fair Trading” and “it” respectively;
  - (b) in paragraph 23(2), for “the Director of Fair Trading” there is substituted “the Office of Fair Trading”.
- (20) In Schedule 14 (role of Competition Commission)—
- (a) in paragraph 2(a), for “Director” and “it” there is substituted “OFT” and “the Commission” respectively;
  - (b) after paragraph 2 there is inserted—

*“Investigations under section 162: application of Enterprise Act 2002*

- 2A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of any investigation by the Commission under section 162 of this Act as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);

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- (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (1), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which the report of the Commission on the investigation concerned is made or, if the Commission decides not to make a report, the day on which the Commission makes the statement required by section 162(3) of the Financial Services and Markets Act 2000.”
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Commission in connection with an investigation under section 162 of this Act as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.

*Section 162: modification of Schedule 7 to the Competition Act 1998*

- 2B For the purposes of its application in relation to the function of the Commission of deciding in accordance with section 162(2) of this Act not to make a report, paragraph 15(7) of Schedule 7 to the Competition Act 1998 (power of the Chairman to act on his own while a group is being constituted) has effect as if, after paragraph (a), there were inserted “; or
- (aa) in the case of an investigation under section 162 of the Financial Services and Markets Act 2000, decide not to make a report in accordance with subsection (2) of that section (decision not to

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make a report where no useful purpose would be served).”

*Reports under section 162: further provision*

- 2C (1) For the purposes of section 163 of this Act, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the investigation concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (2) If a member of a group so constituted disagrees with any conclusions contained in a report made under section 162 of this Act as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission under section 162.”;
- (c) paragraph 3 (applied provisions) shall cease to have effect.
- (21) In Schedule 16 (prohibitions and restrictions imposed by Director General of Fair Trading)—
- (a) in the heading, for “DIRECTOR GENERAL OF FAIR TRADING” there is substituted “OFFICE OF FAIR TRADING”;
- (b) for “Director” (in each place), “his” (in each place), “he” (in both places) and “him” (in both places) there is substituted “OFT”, “its”, “the OFT” and “the OFT” respectively.

*Terrorism Act 2000 (c. 11)*

- 41 (1) The Terrorism Act 2000 is amended as follows.
- (2) In Schedule 3A (regulated sector and supervisory authorities), in paragraph 4(1), for paragraph (d) there is substituted—
- “(d) the Office of Fair Trading;”.

*Postal Services Act 2000 (c. 26)*

- 42 (1) The Postal Services Act 2000 is amended as follows.
- (2) After section 15 (licence modification references to Commission) there is inserted—

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

- (1) Every reference under section 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 15 shall not have effect (and no action shall be taken in relation to it under section 17) unless the report is made before the end of the period specified

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in the reference or such further period (if any) as may be allowed by the Commission under subsection (3).

- (3) The Commission may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The Commission shall, in the case of an extension made by it under subsection (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) to the licence holder and the Secretary of State.

#### **15B References under section 15: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes of references under section 15 as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 15 as it applies in relation to its

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functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4), have effect in relation to those sections as applied by virtue of those subsections.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”

(3) After section 16 (reports on licence modification references), there is inserted—

**“16A Reports on references under section 15: further provision**

(1) For the purposes of sections 17 and 18, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(2) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 15.

(4) In making any report on a reference under section 15 the Competition Commission must have regard to the following considerations before disclosing any information.

(5) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest

(6) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.

(7) The third consideration is the extent to which the disclosure of the information mentioned in subsection (6)(a) or (b) is necessary for the purposes of the report.”

(4) After section 19 (procedural requirements in relation to modification) there is inserted—

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**“19A Sections 18 and 19: further provision**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 19(6) or (8).
- (2) In giving any notice under section 19(6) or (8), the Competition Commission must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)—
  - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8), in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under section 18 as they apply for the purposes of any investigation on references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6), have effect as if—
  - (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words from “the publication” to “reference concerned” there were substituted “the sending of a copy to the Secretary of State under section 19(11) of the Postal Services Act 2000 of the modifications made by the Competition Commission in connection with the reference concerned or, if no direction has been given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the

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- period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
- (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a copy of the modifications made by the Competition Commission in connection with the reference concerned is sent to the Secretary of State under section 19(11) of the Postal Services Act 2000 or, if no direction is given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 18 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (10) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) or (9), have effect in relation to those sections as applied by virtue of those subsections.
- (11) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (5) Section 20 (application of competition legislation to references, etc.) shall cease to have effect.
- (6) In section 57 (power of the Council to investigate other matters), in subsection (2), for paragraph (c) there is substituted—
- “(c) the Office of Fair Trading.”
- (7) In Schedule 7 (disclosure of information), in paragraph 3—
- (a) in sub-paragraph (2), for paragraph (d) there is substituted—
- “(d) the Office of Fair Trading.”;
- (b) in sub-paragraph (3), after paragraph (gg) there is inserted—
- “(gh) the Enterprise Act 2002.”.

#### *Utilities Act 2000 (c. 27)*

- 43 (1) The Utilities Act 2000 is amended as follows.
- (2) In section 5(9) (annual and other reports of the Authority), for “Section 125(1) of the Fair Trading Act 1973 (annual and other reports)” there is substituted “Paragraph

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12A(1) of Schedule 7 to the Competition Act 1998 (annual reports of the Competition Commission)”.

- (3) In section 105 (general restrictions on disclosure of information)—
- (a) in subsection (5), for paragraph (c) there is substituted—  
“*(c) the Office of Fair Trading;*”;
  - (b) in subsection (6), after paragraph (r) there is inserted—  
“*(s) the Enterprise Act 2002;*”;
  - (c) in subsection (11)—
    - (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
    - (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “Part 9 of the Enterprise Act 2002 (Information)”.

*Transport Act 2000 (c. 38)*

- 44 (1) The Transport Act 2000 is amended as follows.
- (2) In section 12 (licence modification references to Commission), subsections (9), (10) and (11) shall cease to have effect.
- (3) After section 12 there is inserted—

**“12A References under section 12: time limits**

- (1) Every reference under section 12 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 12 shall not have effect (and no action shall be taken in relation to it under section 14) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the CAA under subsection (3).
- (3) The CAA may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The CAA shall, in the case of an extension made by it under subsection (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) to the licence holder and the Secretary of State.

**12B References under section 12: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes



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- of references under section 12 as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 12 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4), have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (4) In section 13 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of sections 14 to 17, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

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- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 12 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (2) there is substituted—
- “(2) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 12.
- (2A) In making any report on a reference under section 12 the Competition Commission must have regard to the following considerations before disclosing any information.
- (2B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (2C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (2D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2C)(a) or (b) is necessary for the purposes of the report.”
- (5) For section 18 (provisions supplementary to exercise by Commission of functions under sections 15 and 16) there is substituted—

**“18 Sections 15 and 16: general**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15(4) or 16(4) or (6).
- (2) In publishing or serving any notice under section 15(4) or 16(4) or (6), the Competition Commission must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

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- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8), for the purposes of any investigation by the Competition Commission for the purposes of the exercise of its functions under section 15 or 16, as they apply for the purposes of any investigation on references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6), have effect as if—
  - (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 16(6) of the Transport Act 2000 in connection with the reference concerned or, if no direction has been given by the Commission under section 15(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
  - “(ii) if earlier, the day on which a notice is published by the Commission under section 16(6) of the Transport Act 2000 in connection with the reference concerned or, if no direction is given by the Commission under section 15(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 15 or 16 as it

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applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.

- (10) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) or (9), have effect in relation to those sections as applied by virtue of those subsections.
- (11) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (6) In section 85 (interpretation of Chapter 5), in subsection (1), for paragraph (c) there is substituted—
- “(c) the OFT is the Office of Fair Trading.”
- (7) In section 86 (functions exercisable by CAA and the Director)—
- (a) in subsections (1), (4) and (7), for “the Director” there is substituted “the OFT”;
- (b) in subsection (3), for “the Director's” there is substituted “the OFT's”.
- (8) In section 89 (carrying out functions)—
- (a) for “the Director” (in each place) there is substituted “the OFT”;
- (b) in subsection (2), for “he or it” there is substituted “it”.
- (9) In section 90 (publication of information and advice)—
- (a) in subsection (6), for “The Director must consult the CAA before publishing under section 124 of the 1973 Act” there is substituted “The Office of Fair Trading must consult the CAA before publishing under section 6 of the Enterprise Act 2002”;
- (b) subsection (8) shall cease to have effect.
- (10) In section 91 (review and information)—
- (a) in subsections (3) and (4), for “the Director” (in each place) there is substituted “the Office of Fair Trading”;
- (b) subsection (5) shall cease to have effect.
- (11) In Schedule 9 (air traffic: information)—
- (a) in paragraph 3—
- (i) in sub-paragraph (2), for paragraph (b) there is substituted—
- “(b) the Office of Fair Trading;”;
- (ii) in sub-paragraph (3), after paragraph (r) there is inserted—
- “(ra) the Enterprise Act 2002;”
- (b) in paragraph 5, in sub-paragraph (3), for “Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (12) In Schedule 10 (competition test for exercise of bus functions)—
- (a) for “Director” (in each place) there is substituted “OFT”;
- (b) in paragraph 3(1), for “the Director General of Fair Trading (in this Schedule referred to as “the Director”) for him” there is substituted “the Office of Fair Trading (in this Schedule referred to as “the OFT”) for it”;

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- (c) in paragraph 4, in sub-paragraph (3)—
  - (i) for “he thinks” there is substituted “it thinks”;
  - (ii) for “bringing it” there is substituted “bringing the application”;
  - (iii) for “he is” there is substituted “the OFT is”;
  - (iv) the words “for him” shall cease to have effect;
- (d) in paragraph 4—
  - (i) in sub-paragraph (4), for “he” (in both places) there is substituted “it”;
  - (ii) in sub-paragraph (5), for “him” there is substituted “it”;
- (e) in paragraph 5, for “he” there is substituted “it”;
- (f) in paragraph 6(1), for “him” (in each place) and “he” there is substituted “it” and “the OFT” respectively;
- (g) in paragraph 9, for “he” there is substituted “the OFT”;
- (h) in paragraph 10, for “he” and “his” (in both places) there is substituted “the OFT” and “its” respectively;
- (i) in paragraph 11, for “he” (in each place) and “his” (in both places) there is substituted “the OFT” and “its” respectively;
- (j) in paragraph 12(1), for “he” (in both places) there is substituted “the OFT”;
- (k) in paragraphs 13 to 15, for “his” (in each place) there is substituted “its”;
- (l) in paragraph 16, for “him” and “his” there is substituted “the OFT” and “its” respectively.