
STATUTORY INSTRUMENTS

2003 No. 1398

**COMPETITION
CONSUMER PROTECTION**

**The Enterprise Act 2002 (Consequential
and Supplemental Provisions) Order 2003**

<i>Made</i>	- - - -	<i>28th May 2003</i>
<i>Laid before Parliament</i>		<i>29th May 2003</i>
<i>Coming into force</i>	- -	<i>20th June 2003</i>

The Secretary of State in exercise of the powers conferred on her by section 277 of the Enterprise Act 2002(1) hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 and shall come into force on 20th June 2003.

Consequential and supplemental provisions

2. The amendments, repeals and revocations specified in the Schedule to this Order shall have effect.

Saving provisions

3.—(1) The revocations in paragraphs 3 and 16, the repeal in paragraph 22 and the amendment in paragraph 31 of the Schedule to this Order shall not have effect in relation to—

- (a) the making by the Secretary of State of references under section 32 of the Water Industry Act 1991(2) (duty to refer merger of water or sewerage undertakings), or
- (b) any references so made.

(2) The revocations in paragraph 38 of the Schedule to this Order shall not have effect in relation to any application referred to in Article 5 of the Enterprise Act 2002 (Commencement No.3, Transitional and Transitory Provisions and Savings) Order 2003(3).

(1) 2002 c. 40.

(2) 1991 c. 56.

(3) S.I. 2003/1397 (c. 60).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

28th May 2003

Stephen Timms,
Minister of State for E-Commerce and
Competitiveness,
Department of Trade and Industry

SCHEDULE

Article 2

AMENDMENTS, REPEALS AND REVOCATIONS

Parliamentary Commissioner Act 1967

1.—(1) The Parliamentary Commissioner Act 1967(4) is amended as follows.

(2) In Schedule 4 (relevant tribunals for purposes of section 5(7)), there is inserted at the appropriate place—

“Competition Appeal Tribunal constituted under section 12 of the Enterprise Act 2002.”.

Solicitors (Scotland) Act 1980

2.—(1) The Solicitors (Scotland) Act 1980(5) is amended as follows.

(2) Section 64C(3) is repealed.

(3) After section 64C there is inserted—

“Enforcement of notices under section 64C

64CA.—(1) The court may, on an application by the Office of Fair Trading, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 64C(1).

(2) An application under subsection (1) shall include details of the possible failure which the Office of Fair Trading considers has occurred.

(3) In enquiring into a case under subsection (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) Subsections (5) and (6) apply where the 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 a notice under section 64C(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 or is a partnership constituted under the law of Scotland, the court may punish any director, officer or (as the case may be) partner of the defaulter as it would have been able to punish that director, officer or partner had he been guilty of contempt of court.

Altering, etc. documents required to be produced under section 64C

64CB.—(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 64C(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.”.

(4) 1967 c. 13.

(5) 1980 c. 46. Sections 64A to 64D inserted in the Solicitors (Scotland) Act 1980 by section 43 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Agricultural Marketing (Northern Ireland) Order 1982

- 3.—(1) The Agricultural Marketing (Northern Ireland) Order 1982(6) is amended as follows.
- (2) In Schedule 8 the entry relating to section 90(6) of the Fair Trading Act 1973(7) is revoked.

Transport Act 1985

- 4.—(1) The Transport Act 1985(8) is amended as follows.
- (2) In section 114 (monopoly references with respect to bus services), subsection (2) is repealed.

Airports Act 1986

- 5.—(1) The Airports Act 1986(8) is amended as follows.
- (2) In section 36 (interpretation of part IV, etc), in subsection (1) the definitions of “the 1973 Act” and “the 1980 Act” are repealed.

Channel Tunnel Act 1987

- 6.—(1) The Channel Tunnel Act 1987(9) is amended as follows.
- (2) In section 33 (competition, etc)—
 - (a) subsections (2) to (7), and
 - (b) in subsection (12), the definitions of “the Act of 1976”, “the Act of 1980”, “channel tunnel agreement” and “group”, are repealed.
- (3) In section 34 (supplementary provisions with respect to orders under Part 3), in subsection (3) (a), for the words “section 10(8), 23(5) or 33” are substituted the words “section 10(8) or 23(5)”.

Companies (Disclosure of Information) (Designated Authorities) Order 1988

- 7.—(1) The Companies (Disclosure of Information) (Designated Authorities) Order 1988(10) is amended as follows.
- (2) In article 2 (designation of authorities and specification of functions)—
 - (a) in paragraph (a) for the words “and the Competition Act 1998” are substituted the words “, the Competition Act 1998 and the Enterprise Act 2002”;
 - (b) in paragraph (b) for the words “and the Competition Act 1998” are substituted the words “, the Competition Act 1998 and the Enterprise Act 2002”.

Water Act 1989

- 8.—(1) The Water Act 1989(11) is amended as follows.
- (2) In Schedule 25 (minor and consequential amendments) paragraph 45(4) is repealed.

(6) S.I. 1982/1080 (N.I. 12).

(7) 1973 c. 41.

(8) 1986 c. 31.

(8) 1986 c. 31.

(9) 1987 c. 53.

(10) S. I. 1988/1334, amended by S.I. 2000/2031.

(11) 1989 c. 15.

Electricity Act 1989

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

(2) In section 100 (competition and restrictive trade practices), in subsection (1) for the words “and the 1980 Act” are substituted the words “, the 1980 Act and the Enterprise Act 2002”.

(3) In section 113 (short title, commencement and extent), in subsection (3) the words “(other than paragraph 3 of Schedule 5 to the Fair Trading Act 1973)” are repealed.

Companies Act 1989

10.—(1) The Companies Act 1989(**13**) is amended as follows.

(2) In Schedule 14, in paragraph 4A, after sub-paragraph (6) insert—

“(6A) Where the defaulter is a partnership constituted under the law of Scotland, the court may punish any partner of the defaulter as it would have been able to punish him had he been guilty of contempt of court.”.

Financial Services (Disclosure of Information) (Designated Authorities) (No 6) Order 1989

11.—(1) The Financial Services (Disclosure of Information) (Designated Authorities) (No 6) Order 1989(**14**) is amended as follows.

(2) In article 2 (designation of authorities and specification of functions)—

(a) in paragraph (a), in sub-paragraph (vi) the word “and” is revoked and after sub-paragraph (vii) there is inserted “(viii) the Enterprise Act 2002; and”;

(b) in paragraph (b) for the words “and the Competition Act 1980” are substituted the words “, the Competition Act 1980 and the Enterprise Act 2002”.

(3) In article 3 for the words in paragraph (a) are substituted the words “Part 8 of the Enterprise Act 2002;”.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

12.—(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(**15**) is amended as follows.

(2) Section 41(3) is repealed.

(3) After section 41 there is inserted—

“Enforcement of notices under section 41

41A.—(1) The court may, on an application by the Office of Fair Trading, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 41(1).

(2) An application under subsection (1) shall include details of the possible failure which the Office of Fair Trading considers has occurred.

(3) In enquiring into a case under subsection (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.

(12) 1989 c. 29.

(13) 1989 c. 40.

(14) S.I. 1989/2009, amended S.I. 1999/506 and S.I. 2000/2031.

(15) 1990 c. 40.

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(4) Subsections (5) and (6) apply where the 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 a notice under section 41(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 or is a partnership constituted under the law of Scotland, the court may punish any director, officer or (as the case may be) partner of the defaulter as it would have been able to punish that director, officer or partner had he been guilty of contempt of court.

(7) In this section “the court” means the Court of Session.

Altering, etc. documents required to be produced under section 41

41B.—(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 41(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.”.

Courts and legal Services Act 1990

13.—(1) The Courts and Legal Services Act 1990(**16**) is amended as follows.

(2) In section 50(2)(m) (exceptions from restrictions on disclosure: exercise of OFT’s functions), re-number the sub-paragraph (x) inserted by paragraph 23(5)(b) of Schedule 25 to the Enterprise Act 2002 as sub-paragraph (xi).

Broadcasting Act 1990

14.—(1) The Broadcasting Act 1990(**17**) is amended as follows.

(2) Section 197(5) is repealed.

(3) In Schedule 4, in paragraph 8A, after sub-paragraph (6) insert—

“(6A) Where the defaulter is a partnership constituted under the law of Scotland, the court may punish any partner of the defaulter as it would have been able to punish him had he been guilty of contempt of court.”.

Companies (Northern Ireland) Order 1990

15.—(1) The Companies (Northern Ireland) Order 1990(**18**) is amended as follows.

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

- (a) paragraph 4(5) is revoked;
- (b) after paragraph 4 there is inserted—

(16) 1990 c. 41.

(17) 1990 c. 42.

(18) S.I. 1990/593 (N.I. 5).

“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 a 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 paragraph “the court” means the High Court.

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.”; and

(c) paragraph 8 (exemptions from the Fair Trading Act 1973) is revoked.

EEC Merger Control (Consequential Provisions) Regulations 1990

16.—(1) The EEC Merger Control (Consequential Provisions) Regulations 1990⁽¹⁹⁾ are amended as follows.

(2) Regulations 1 and 3 are revoked.

EEC Merger Control (Distinct Market Investigations) Regulations 1990

17.—(1) The EEC Merger Control (Distinct Market Investigations) Regulations 1990⁽²⁰⁾ are amended as follows.

(2) In regulation 2—

(a) for the words “Director General of Fair Trading (“the Director”)” are substituted the words “Office of Fair Trading (“the OFT”)” and for the words “by him” are substituted the words “on behalf of the OFT”;

(b) in paragraphs (a) and (b) for the word “Director” is substituted the word “OFT”; and

(c) in paragraph (a) for the word “him” are substituted the words “the OFT”.

⁽¹⁹⁾ S.I. 1990/1563.

⁽²⁰⁾ S.I. 1990/1715.

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(3) For regulation 3 there is substituted—

“3.—(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 regulation 2.

(2) An application under paragraph (1) shall include details of the possible failure which the OFT considers has occurred.

(3) In enquiring into a case under 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) Paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with a notice under regulation 2.

(5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court but in punishing the defaulter the court shall not impose any penalty which could not be imposed on summary conviction for an offence created in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

(6) Where the defaulter is a body corporate or is a partnership constituted under the law of Scotland, the court may punish any director, officer or (as the case may be) partner of the defaulter as it would have been able to punish that director, officer or partner had he been guilty of contempt of court.

(7) In this regulation “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.”.

(4) For regulation 4 there is substituted—

“4.—(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 regulation 2.

(2) A person who commits an offence under 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.”.

(5) After regulation 4 there is inserted—

“5 —Section 117 (false or misleading information) and Part 9 (information) of the Enterprise Act 2002 shall apply as if these Regulations were contained in Part 3 of that Act.”.

New Roads and Street Works Act 1991

18.—(1) The New Road and Street Works Act 1991(**21**) is amended as follows.

(2) In section 10 (application of enactments relating to monopolies)—

- (a) in subsection (1) for the words from the beginning of the subsection to “a person” are substituted the words “For the purposes of the Enterprise Act 2002, a person”; and
- (b) subsection (2) is repealed.

(3) In section 33 (application of enactments relating to monopolies)—

(21) 1991 c. 22.

- (a) in subsection (1) for the words from the beginning of the subsection to “a person” are substituted the words “For the purposes of the Enterprise Act 2002, a person”; and
- (b) subsection (2) is repealed.

Solicitors' Incorporated Practices Order 1991

19.—(1) The Solicitors' Incorporated Practices Order 1991(22) is amended as follows.

(2) In Schedule 1 (statutes which apply to recognised bodies) the reference to the Fair Trading Act 1973 is revoked.

Electricity (Northern Ireland) Order 1992

20.—(1) The Electricity (Northern Ireland) Order 1992(23) is amended as follows.

(2) In Schedule 12 (amendments) paragraph 11 is revoked.

Railways Act 1993

21.—(1) The Railways Act 1993(24) is amended as follows.

(2) In section 66 (amendments of the Fair Trading Act 1973) subsection (5) is repealed.

(3) In section 67 (respective functions of the Regulator and OFT etc.), in subsection (7) for the words “the supply of railway services” are substituted the words “the supply of services relating to railways”.

Deregulation and Contracting Out Act 1994

22.—(1) The Deregulation and Contracting Out Act 1994(25) is amended as follows.

(2) In section 82 (short title, commencement and extent), in subsection (2)(e) the words “sections 93A and 133 of the Fair Trading Act 1973,” are repealed.

Energy Information (Refrigerators and Freezers) Regulations 1994

23.—(1) The Energy Information (Refrigerators and Freezers) Regulations 1994(26) are amended as follows.

(2) In Schedule 6 (offences, enforcement and other matters) paragraph 15(3)(b) is revoked.

Channel Tunnel Rail Link Act 1996

24.—(1) The Channel Tunnel Rail Link Act 1996(27) is amended as follows.

(2) In section 22 (restriction of functions in relation to competition etc), in subsection (2) for the words from the beginning to “by him” are substituted the words “The functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 which are concurrent functions of the Office of Fair Trading and the Rail Regulator by virtue of section 67(2) of the Railways Act 1993 shall not be exercisable by the Rail Regulator”.

(3) Sections 24 (monopoly situations) and 26 (sections 23 to 25: supplementary provisions) are repealed.

(22) S.I. 1991/2684, to which there are amendments not relevant to this Order.

(23) S.I. 1992/231 (N. I. 1).

(24) 1993 c. 43.

(25) 1994 c. 40.

(26) S. I. 1994/3076; relevant amending instrument is S. I. 2001/3142.

(27) 1996 c. 61.

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Education Act 1996

- 25.—(1) The Education Act 1996(28) is amended as follows.
(2) In Schedule 37 (consequential amendments) paragraph 26 is repealed.

Energy Information (Washing Machines) Regulations 1996

- 26.—(1) The Energy Information (Washing Machines) Regulations 1996(29) are amended as follows.
(2) In Schedule 5 (offences, enforcement and other matters) paragraph 15(3)(b) is revoked.

Energy Information (Tumble Dryers) Regulations 1996

- 27.—(1) The Energy Information (Tumble Dryers) Regulations 1996(30) are amended as follows.
(2) In Schedule 5 (offences, enforcement and other matters) paragraph 15(3)(b) is revoked.

Timeshare Regulations 1997

- 28.—(1) The Timeshare Regulations 1997(31) are amended as follows.
(2) Regulation 13(5) is revoked.

Energy Information (Combined Washer-driers) Regulations 1997

- 29.—(1) The Energy Information (Combined Washer-driers) Regulations 1997(32) are amended as follows.
(2) In Schedule 5 (offences, enforcement and other matters) paragraph 15(3)(b) is revoked.

Energy Efficiency (Refrigerators and Freezers) Regulations 1997

- 30.—(1) The Energy Efficiency (Refrigerators and Freezers) Regulations 1997(33) are amended as follows.
(2) In Schedule 3 (offences, enforcement and other matters) paragraph 15(3)(b) is revoked.

Copyright and Rights in Databases Regulations 1997

- 31.—(1) The Copyright and Rights in Databases Regulations 1997(34) are amended as follows.
(2) In Schedule 2 (licensing of database right), in paragraph 15 (powers exercisable in consequence of competition report) 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 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) or article 12(7) of, or paragraph 5(2) or 10(2) of Schedule 2 to, the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003

(28) 1996 c. 56.

(29) S. I. 1996/600; relevant amending instrument is S.I. 2001/3142.

(30) S.I. 1996/601; relevant amending instrument is S.I. 2001/3142.

(31) S.I. 1997/1081.

(32) S.I. 1997/1624; relevant amending instrument is S.I. 2001/3142.

(33) S.I. 1997/1941; relevant amending instrument is S.I. 2001/3142.

(34) S.I. 1997/3032, amended by S.I. 1999/506.

(power to take remedial action following references to the Commission in connection with European mergers) consists of or includes—

- (a) conditions in licences granted by the owner of database right in a database restricting the use of the database by the licensee or the right of the owner of the database right to grant other licences; or
- (b) a refusal of an owner of database right 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 database 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 and paragraphs 5, 10 and 11 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 shall be construed accordingly.”

Competition Act 1998

32.—(1) The Competition Act 1998(**35**) is amended as follows.

(2) In Schedule 10 (regulators) paragraphs 10(2), 15(2) and 18(2) are repealed.

(3) In Schedule 12 (minor and consequential amendments)—

- (a) paragraph 1(9) is repealed;
- (b) paragraph 7 is repealed;
- (c) paragraph 11 is repealed;
- (d) paragraph 14 is repealed;
- (e) paragraph 16 is repealed;
- (f) paragraph 17 is repealed; and
- (g) paragraph 20 is repealed.

Energy Information (Lamps) Regulations 1999

33.—(1) The Energy Information (Lamps) Regulations 1999(**36**) are amended as follows.

(2) In Schedule 4 (offences, enforcement and other matters) paragraph 12(3)(b) is revoked.

Energy Information (Dishwashers) Regulations 1999

34.—(1) The Energy Information (Dishwashers) Regulations 1999(**37**) are amended as follows.

(2) In Schedule 5 (offences, enforcement and other matters) paragraph 12(3)(b) is revoked.

Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999

35.—(1) The Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999(**38**) are amended as follows.

(2) In Part 2 of Schedule 1 (general conditions), in paragraph 31.2(d) after the words “the Fair Trading Act 1973” are inserted the words “or the Enterprise Act 2002”.

(35) 1998 c. 41.

(36) S.I. 1999/1517, to which there are amendments not relevant to this Order.

(37) S.I. 1999/1676, to which there are amendments not relevant to this Order.

(38) S.I. 1999/2450, to which there are amendments not relevant to this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Water Appointment (Competition Commission) Regulations 1999

36.—(1) The Water Appointment (Competition Commission) Regulations 1999(**39**) are amended as follows.

(2) In regulation 3 (interpretation), for the words in paragraph (a) are substituted the words “the 2002 Act” means the Enterprise Act 2002.

(3) For regulations 7 and 8 there is substituted—

“Time limits

7.—(1) Every determination reference shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the determination reference is to be made.

(2) A report of the Commission on a determination reference shall not have effect (and no action shall be taken in relation to it) unless the report is made before the end of the period specified in the determination reference or such further period (if any) as may be allowed by the Director under paragraph (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 determination reference, extend that period by no more than six months.

(4) No more than one extension is possible under paragraph (3) above in relation to the same determination reference.

(5) The Director shall, in the case of an extension made by him under 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 sub-paragraph (a) above to the company whose appointment is mentioned in the determination reference.

Powers of investigation

8.—(1) The following sections of Part 3 of the 2002 Act shall apply, with the modifications mentioned in paragraphs (2) and (3) below, for the purposes of a determination reference 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) 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.

(39) S.I. 1999/3088.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of 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) Provisions of Part 3 of the 2002 Act 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) above, have effect in relation to those sections as applied by virtue of that paragraph.”.

(4) After regulation 10 (reports on determination references) there is inserted—

“**10A** 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 determination reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.”.

(5) For regulation 11(1) there is substituted—

“(1) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a determination reference.

(1A) In making any report on a determination reference the Commission must have regard to the following considerations before disclosing any information.

(1B) 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.

(1C) 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.

(1D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (1C)(a) or (b) above is necessary for the purposes of the report.”.

Transport Act 2000

37.—(1) The Transport Act 2000(**40**) is amended as follows.

(2) In section 88 (CAA’s 1998 Act functions), in subsection (3) for the word “1973” there is substituted the word “2002”.

Competition Act 1998 (Director’s rules) Order 2000

38.—(1) The Competition Act 1998 (Director’s rules) Order 2000(**41**) is amended as follows.

(2) In the Schedule—

- (a) in rule 26(1)(a)(iv) the words “, or rule 28(6) below” are revoked;

(40) 2000 c. 38.

(41) S.I. 2000/293.

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- (b) in rule 26(2) paragraph (c) is revoked;
- (c) rule 28 is revoked;
- (d) in rule 30(1)(b)(i)—
 - (i) before the words “24(1) to (3)” insert “and”; and
 - (ii) the words “, and 28(2) and (3)(b)” are revoked;
- (e) in rule 30(1)(b)(ii)—
 - (i) before the words “and 24(4) and (5)” insert “and”; and
 - (ii) the words “, and 28(4),(5) and (7)” are revoked.

Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000

39.—(1) The Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000(42) is amended as follows.

- (2) In Article 9—
 - (a) paragraph (2)(a) and (b) is revoked;
 - (b) paragraph (3) is revoked; and
 - (c) paragraph (4) is revoked.
- (3) Article 31 is revoked.

Utilities Act 2000 (Supply of Information) Regulations 2000

40.—(1) The Utilities Act 2000 (Supply of Information) Regulations 2000(43) are amended as follows.

(2) In regulation 5 (information whose disclosure would be affected by the application of other legislation) in paragraph (1)(b) for the words “sections 44, 50, 52, 53, 56A to 56G, 86 and 88 of the Fair Trading Act 1973” are substituted the words “Part 4 of the Enterprise Act 2002”.

EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001

41.—(1) The EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001(44) are amended as follows.

- (2) In regulation 25(3) paragraph (g) is revoked.
- (3) For regulation 26 there is substituted—
 - “(1) A person who does not fall within regulation 25(1) or (2) may appeal to the tribunal with respect to a decision falling within paragraphs (a) to (f) of regulation 25.
 - (2) A person may make an appeal under paragraph (1) only if the tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.
 - (3) The making of an appeal under this regulation does not suspend the effect of the decision to which the appeal relates.”
- (4) In regulation 32(1)(b) for “a” there is substituted “the”.
- (5) In Schedule 1—

(42) S.I. 2000/311.

(43) S.I. 2000/2956.

(44) S.I. 2001/2916, amended by S.I. 2002/42 and S.I. 2003/767.

- (a) in rule 18(1)—
 - (i) at the end of sub-paragraph (b) insert “or”;
 - (ii) at the end of paragraph (c) the word “or” is revoked;
 - (iii) sub-paragraph (d) is revoked;
- (b) in rule 18(2) sub-paragraph (b) is revoked;
- (c) rule 20 is revoked;
- (d) in rule 21(1)(b)(i)—
 - (i) before the words “7(3)” insert “and”; and
 - (ii) the words “and 20(2) and (3)(b)” are revoked;
- (e) in rule 21(1)(b)(ii)—
 - (i) before the words “15(3)(a)” insert “and”; and
 - (ii) the words “and 20(4), (5) and (7)” are revoked.

Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001

42.—(1) The Energy Efficiency (Ballasts for Fluorescent Lighting) Regulations 2001(45) are amended as follows.

- (2) In Schedule 3 (offences, enforcement and other matters), paragraph 12(3)(b) is revoked.

Uncertificated Securities Regulations 2001

43.—(1) The Uncertificated Securities Regulations 2001(46) are amended as follows.

- (2) In Schedule 2 (prevention of restrictive practices)—

- (a) in paragraph 3—
 - (i) in sub-paragraph (1) for the words “Director General of Fair Trading (in this Schedule referred to as “the Director)””; are substituted the words “Office of Fair Trading (in this Schedule referred to as “the OFT)” and for the word “his” is substituted the word “its”;
 - (ii) in sub-paragraphs (2) to (8) for the word “Director” or (as the case may be) “Director’s” (in each place) is substituted the word “OFT” or (as the case may be) “OFT’s”
 - (iii) in sub-paragraphs (2) to (6) and (8) for the word “his” (in each place) is substituted the word “its”;
 - (iv) in sub-paragraphs (2) and (4)(b) for the word “him” is substituted the word “it”;
 - (v) in sub-paragraphs (4)(b), (6) and (8) for the word “he” (in each place) is substituted the word “it”; and
 - (vi) in the cross-heading before paragraph 3, for the words “Director General of Fair Trading” are substituted the words “Office of Fair Trading”.
- (b) in paragraph 4—
 - (i) in sub-paragraph (1), (1)(a) and (b) for the word “Director” (in each place) is substituted the word “OFT”;
 - (ii) in sub-paragraph (1) for the word “his” is substituted the word “its”;

(45) S.I. 2001/3316.

(46) S.I. 2001/3755.

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- (iii) in sub-paragraph (1)(a) for the word “him” is substituted the word “it”;
 - (iv) sub-paragraph (3) is revoked; and
 - (v) in the cross-heading before paragraph 4, for the words “*Director General of Fair Trading*” are substituted the words “*Office of Fair Trading*”.
- (c) after paragraph 4 there is inserted—

“Enforcement

4A.—(1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 4(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 a notice under paragraph 4(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 or is a partnership constituted under the law of Scotland, the court may punish any director, officer or (as the case may be) partner of the defaulter as it would have been able to punish that director, officer or partner had he been guilty of contempt of court.

(7) In this paragraph “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.

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(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.”; and

- (c) paragraph 5 (exemptions from the Fair Trading Act 1973) is revoked.

Nursing and Midwifery Order 2001

44.—(1) The Nursing and Midwifery Order 2001⁽⁴⁷⁾ is amended as follows.

- (2) In Schedule 5 (consequential amendments to primary legislation), paragraph 3 is revoked.

⁽⁴⁷⁾ S.I. 2002/253.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential amendments in connection with the commencement of the provisions of the Enterprise Act 2002 (EA 2002).

Article 2 gives effect to the amendments, repeals and revocations contained in the Schedule to this Order.

Article 3(1) makes savings in relation to certain provisions for the purposes of water merger references by the Secretary of State under the Water Industry Act 1991 (WIA 1991) where the relevant Fair Trading Act 1973 (FTA 1973) and related provisions will continue to apply until the amendments to the WIA 1991, made by the EA 2002, come into force.

Article 3(2) makes a saving in relation to the revocation of provisions in the Competition Act 1998 (Director's rules) Order 2000 to be consistent with the saving in Article 5 of the Enterprise Act 2002 (Commencement No.3, Transitional and Transitory Provisions and Savings) Order 2003 (S.I.2003/1397 (c. 60)) concerning the amendments made by section 17 of the EA 2002 to the provisions concerning third party appeals in section 47 of the Competition Act 1998. The savings ensure that any application to the Office of Fair Trading or appeal to the Competition Appeal Tribunal in relation to a decision made before 20th June 2003 may be proceeded with in accordance with the old law and old Director's rules notwithstanding the commencement of section 17.

In relation to the Schedule, paragraph 1 adds the Competition Appeal Tribunal to Schedule 4 of the Parliamentary Commissioner Act 1967 making it a relevant tribunal for the purposes of section 5(7) of that Act.

Paragraph 2 amends the Solicitors (Scotland) Act 1980. Under section 64C(1) the Office of Fair Trading (OFT) can issue a notice requiring the production of documents for the purpose of investigating a matter under section 64A of that Act. Section 64C(3) of that Act applies section 85(5) to (8) of the FTA 1973 (contempt of court provisions) to enforce such notices. The amendments repeal the cross-reference to section 85 FTA 1973 and reproduce these provisions with some modifications. Similar amendments were made in Schedule 14 to the Companies Act 1989, section 46 of the Courts and Legal Services Act 1990 and Schedule 4 to the Broadcasting Act 1990 by virtue of Schedule 25 to the EA 2002. Similar amendments are made in this Order by virtue of paragraph 12 of the Schedule to this Order in relation to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, paragraph 15 in relation to the Companies (Northern Ireland) Order 1990, paragraph 17 in relation to the EEC Merger Control (Distinct Market Investigations) Regulations 1990 and in paragraph 43 in relation to the Uncertificated Securities Regulations 2001.

Paragraphs 3, 4, 8, 19, 20, 22, 25, 28 and 44 revoke or repeal provisions that refer to FTA 1973 provisions which have been repealed by the EA 2002.

Paragraph 5 repeals certain definitions in section 36(1) of the Airports Act 1986 which are no longer required following amendments made by the EA 2002.

Paragraph 6 makes consequential amendments to section 33 of the Channel Tunnel Act 1987 following the repeal of section 6 FTA 1973 by the EA 2002.

Paragraphs 7 and 11 update the Companies (Disclosure of Information) (Designated Authorities) Order 1988 and Financial Services (Disclosure of Information) (Designated Authorities) (No 6) Order 1989 by adding references to the EA 2002.

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Paragraph 9 consequentially amends section 100 of the Electricity Act 1989 so that electricity will be treated as goods for the purposes of the EA 2002.

Paragraph 10 amends paragraph 4A of Schedule 14 to the Companies Act 1989 so as to include Scottish partnerships in the contempt of court provisions in that paragraph.

Paragraph 13 rectifies a numbering error in section 50(2)(m) of the Courts and Legal Services Act 1990.

Paragraph 14 repeals section 197(5) of the Broadcasting Act 1990 which refers to information disclosure provisions which have been repealed by the EA 2002 and amends paragraph 8A of Schedule 4 so as to include Scottish partnerships in the contempt provisions of that paragraph.

Paragraph 16 revokes regulations 1 and 3 of the EEC Merger Control (Consequential Provisions) Regulations, which are no longer required because the provisions of the EA 2002 are adequate.

Paragraph 18 amends sections 10 and 33 of the New Roads and Street Works Act 1991 so that a person authorised to charge a toll shall be deemed to supply a service for the purposes of the EA 2002.

Paragraph 21 repeals section 66(5) of the Railways Act 1993 which refers to a provision of the FTA 1973 that has been repealed by the EA 2002. It also consequentially amends section 67(7) to make it consistent with amendments made by the EA 2002.

Paragraphs 23, 26, 27, 29, 30, 33, 34 and 42 revoke references to the FTA 1973 which are in the restrictions on disclosure of information provisions of the legislation referred to in those paragraphs.

Paragraph 24 consequentially amends the Channel Tunnel Rail Link Act 1996 to make it consistent with amendments made by the EA 2002.

Paragraph 31 amends paragraph 15 of Schedule 2 to the Copyright and Rights in Databases Regulations 1997 so as to refer to the enforcement powers in the EA 2002 and the Enterprise Act 2002 (Protection of Legitimate) Interests Order 2003. These amendments are similar to those amendments made by the EA 2002 to section 144 of the Copyright, Designs and Patents Act 1988 in relation to licences granted by the owner of copyright, but they are in relation to database right.

Paragraphs 32 and 39 repeal/revoke provisions that are no longer relevant because of the EA 2002.

Paragraph 35 updates Part 2 of Schedule 1 to the Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999 so there is reference to the EA 2002.

Paragraph 36 amends the Water Appointment (Competition Commission) Regulations 1999 which set out the procedures in relation to Competition Commission references under section 12 of the WIA 1991 for the determination of matters arising under an instrument of appointment of a water or sewerage undertaker. The amendments bring the procedure for section 12 WIA 1991 references in line with the procedures for section 14 WIA 1991 references, which were amended by the EA 2002.

Paragraph 37 amends the Transport Act 2000 so that there is a reference to the EA 2002.

Paragraph 38 consequentially amends the Competition Act 1998 (Director's rules) Order 2000 to take account of the amendments made to the third party appeals provisions in the Competition Act 1998.

Paragraph 40 consequentially amends the Utilities Act 2002 (Supply of Information) Regulations 2000 as the monopoly references referred to in regulation 5 have been repealed and replaced with Part 4 of the EA 2002.

Paragraph 41 amends the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 to make them consistent with the Competition Act 1998 as amended by the EA 2002.