



# Fair Trading Act 1973

## 1973 CHAPTER 41

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

[25th July 1973]

### Modifications etc. (not altering text)

- C1** Act applied (3.1.1995) by 1994 c. 40, ss. 7, 82(2)(a)(b), **Sch. 2 para. 15**  
Act applied (E.W.S.) (1.3.1996) by 1986 c. 44, s. 27 (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 25**; S.I. 1996/218, art. 2)  
Act applied (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, art. 2)  
Act applied (N.I.) (10.6.1996) by S.I. 1996/275, arts. 18(5), 23(8) (with Sch. 7 paras. 2, 3(2); S.R. 1996/216, art. 2)
- C2** Act amended by Electricity Act 1989 (c. 29, SIF 44:1), s. 100(1)
- C3** Act modified (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 30(1)–(3)
- C4** Act restricted by S.I. 1990/593 (N.I. 5), art. 49(1), **Sch. 14 Pt. II para. 8**
- C5** Act amended (E.W.)(1. 11. 1991) by New Roads and Street Works Act 1991 (c. 22, SIF 59), ss. 10(1)(a), 12(4), (with ss. 25(2), 167(2)); S.I. 1991/2288, art. 3, Sch.
- C6** Act amended (S.)(21.10.1991) by New Roads and Street Works Act 1991 (c. 22, SIF 108), s. 33(1)(a) (with ss. 47(4), 167(2)); S.I. 1991/2286, art. 2(1), **Sch.1**

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- C7** Act modified (E.W.)(1. 11. 1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59\)](#), **ss. 10(2), 12(4)**, (with ss. 25(2), 167(2)); [S.I. 1991/2288](#), **art. 3**, Sch
- C8** Act modified (S.) (21.10.1991) by [New Roads and Street Works Act 1991 \(c. 22, SIF 108\)](#), **s. 33(2)** (with ss. 47(4), 167(2)); [S.I. 1991/2286](#), **art. 2(1)**, **Sch. 1**
- C9** Act: power to apply conferred (E.W.)(01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 12(5), 223(2)** (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C10** Act: definitions applied (E.W.)(01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 17(4), 31(9), 223(2)** (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C11** Act modified (E.W.)(01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss.34(1)(2),35(4), 223(2)** (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C12** Act modified (17.2.1994) by [S.I. 1993/3160 \(N.I. 15\)](#), **art. 32(1)(a)** (with Sch. 9 para. 1).

**PART I**

INTRODUCTORY

**F<sup>1</sup>1 Director General of Fair Trading.**

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**Textual Amendments**

**F1** S. 1 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/766](#), art. 2, Sch. (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

**F<sup>2</sup>2 General functions of Director.**

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**Textual Amendments**

**F2** S. 2 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), **Sch.** (with arts. 6, 8)

**F<sup>3</sup>3 Consumer Protection Advisory Committee.**

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**Textual Amendments**

**F3** S. 3 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 10(1)(a), 279, **Sch. 26**; [S.I. 2003/766](#), art. 2, **Sch.** (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch. and see transitional provisions in [S.I. 2003/1397](#), arts. 6, 8)

**F<sup>4</sup>4** .....

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**Textual Amendments**

**F4** S. 4 repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 1(2), **Sch. 14 Pt. I** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**

**F5** **Principal functions of Commission.**

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**Textual Amendments**

**F5** S. 5 repealed (29.12.2003) by **The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003** (S.I. 2003/3180), art. 1(1), **Sch. para. 1(2)** (with art. 3)

**F6** **Monopoly situation in relation to supply of goods.**

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**Textual Amendments**

**F6** Ss. 6-11 repealed (20.6.2003) by **Enterprise Act 2002** (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 6, 8, 11)

**F67** **Monopoly situation in relation to supply of services.**

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**Textual Amendments**

**F6** Ss. 6-11 repealed (20.6.2003) by **Enterprise Act 2002** (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 6, 8, 11)

**F68** **Monopoly situation in relation to exports.**

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**Textual Amendments**

**F6** Ss. 6-11 repealed (20.6.2003) by **Enterprise Act 2002** (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 6, 8, 11)

**F69** **Monopoly situation limited to part of United Kingdom.**

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**Textual Amendments**

**F6** Ss. 6-11 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8, 11)

**F610 Supplementary provisions relating to ss. 6 to 9.**

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**Textual Amendments**

**F6** Ss. 6-11 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8, 11)

**F611 Meaning of “complex monopoly situation”.**

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**Textual Amendments**

**F6** Ss. 6-11 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8, 11)

**F712 Powers of Secretary of State in relation to functions of Director.**

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**Textual Amendments**

**F7** S. 12 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 9, 279, **Sch. 26**; S.I. 2003/766, art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))

**PART II**

REFERENCES TO CONSUMER PROTECTION ADVISORY COMMITTEE

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

**C13** Pt. II: power to repeal conferred (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 10(3)(a)**, 279; S.I. 2003/766, art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))

*General provisions*

**F813 Meaning of “consumer trade practice”.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 10(1)(b), 279, [Sch. 26](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**<sup>F8</sup>14 General provisions as to references to Advisory Committee.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 10(1)(b), 279, [Sch. 26](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**<sup>F8</sup>15 Exclusion from s. 14 in respect of certain services.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 10(1)(b), 279, [Sch. 26](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**<sup>F8</sup>16 Restriction on references under s. 14 in respect of certain goods and services.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 10(1)(b), 279, [Sch. 26](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**<sup>F8</sup>17 Reference to Advisory Committee proposing recommendation to Secretary of State to make an order.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 10(1)(b), 279, [Sch. 26](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**<sup>F8</sup>18 No such recommendation to be made except in pursuance of reference to which s. 17 applies.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 10(1)(b), 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F8 19 Scope of recommendation proposed in reference to which s. 17 applies.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 10(1)(b), 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F8 20 Time-limit and quorum for report on reference to which s. 17 applies.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 10(1)(b), 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F8 21 Report of Advisory Committee on reference to which s. 17 applies.**

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**Textual Amendments**

**F8** Ss. 13-21 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 10(1)(b), 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

*Order in pursuance of report of Advisory Committee*

**F9 22 Order of Secretary of State in pursuance of report on reference to which s. 17 applies.**

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**Textual Amendments**

**F9** S. 22 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 10(1)(c), 279, Sch. 26 (with s. 10(2)); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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

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

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

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

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

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

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

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

A contract for the supply of goods or services shall not be void or unenforceable by reason only of a contravention of an order made under section 22 of this Act; and, subject to the provisions of [F10section 18 of the M1Interpretation Act 1978] (which relates to offences under two or more laws), the provisions of this Part of this Act shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of such an order, or

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- (b) affecting any restriction imposed by or under any other enactment, whether public, local or private, or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part of this Act.

**Textual Amendments**

**F10** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

**Marginal Citations**

**M1** [1978 c. 30.](#)

*Enforcement of orders*

**27 Enforcing authorities.**

- (1) It shall be the duty of every local weights and measures authority to enforce within their area the provisions of any order made under section 22 of this Act; . . . <sup>F11</sup>
- (2) Nothing in subsection (1) shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

**Textual Amendments**

**F11** Words repealed by [Weights and Measures Act 1985 \(c. 72, SIF 131\), s. 98, Sch. 13 Pt. I](#)

**28 Power to make test purchases.**

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

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

- (1) A duly authorised officer of a local weights and measures authority, or a person duly authorised in writing by the Secretary of State, may at all reasonable hours, and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 23 of this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
  - (b) if he has reasonable cause to suspect that an offence under that section has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document;



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- (c) if he has reasonable cause to believe that such an offence has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
  - (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for such an offence;
  - (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of an order made under section 22 of this Act are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.
- (2) A person seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.
- (3) If a justice of the peace, on sworn information in writing,—
- (a) is satisfied that there is reasonable ground to believe either—
    - (i) that any goods, books or documents which a person has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 23 of this Act, or
    - (ii) that any offence under section 23 has been, is being or is about to be committed on any premises, and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent, and it might defeat the object of the entry to await his return,
- the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any such officer or other person as is mentioned in subsection (1) of this section to enter the premises, if need be by force.
- In the application of this subsection to Scotland, “justice of the peace” shall be construed as including a sheriff and a magistrate.
- (4) A person entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) of this section he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (5) Nothing in this section shall be taken to compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

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

- C14** S. 29(1)(c)(d) powers of seizure extended (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), ss. 50, 138(2), [Sch. 1 para. 16](#) (with ss. 52-54, 68); S.I. 2003/708, art. 2(a)

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

- (1) Subject to subsection (6) of this section, any person who—
- (a) wilfully obstructs any such officer or person as is mentioned in subsection (1) of section 29 of this Act acting in the exercise of any powers conferred on him by or under that section, or
  - (b) wilfully fails to comply with any requirement properly made to him by such an officer or person under that section, or
  - (c) without reasonable cause fails to give to such an officer or person so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Part of this Act, shall be guilty of an offence.
- (2) If any person, in giving any such information as is mentioned in subsection (1)(c) of this section, makes any statement which he knows to be false, he shall be guilty of an offence.
- <sup>F12</sup>(3) .....
- (4) If any person who is neither a duly authorised officer of a weights and measures authority nor a person duly authorised in that behalf by the Secretary of State purports to act as such under section 29 of this Act or under this section, he shall be guilty of an offence.
- (5) Any person guilty of an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding [<sup>F13</sup>level 3 on the standard scale]; and any person guilty of an offence under subsection (2) <sup>F14</sup>... or subsection (4) of this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (6) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

**Textual Amendments**

- F12** S. 30(3) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 247(b), 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with art. 6)
- F13** Words substituted (E.W.) by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46 and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), ss. 289F, 289G and (N.I.) by S.I. 1984/703 (N.I. 3), [arts. 5, 6](#)
- F14** Words in s. 30(5) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8)

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### 31 Notice of test.

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

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

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

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

C15 S. 31 applied (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), [Sch. 2 para. 2](#); S.I. 2003/708, art. 2(k)

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

- (1) Where in the exercise of his powers under section 29 of this Act a person seizes and detains any goods, and their owner suffers loss by reason of their being seized or by reason that the goods, during the detention, are lost or damaged or deteriorate, unless the owner is convicted of an offence under section 23 of this Act committed in relation to the goods, the appropriate authority shall be liable to compensate him for the loss so suffered.
- (2) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.
- (3) In this section “the appropriate authority”—
  - (a) in relation to goods seized by an officer of a local weights and measures authority, means that authority, and
  - (b) in any other case, means the Secretary of State.

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

C16 S. 32 applied (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), [Sch. 2 para. 6](#); S.I. 2003/708, art. 2(k)

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

- (1) It shall be the duty of [<sup>F15</sup>the Department of Commerce for Northern Ireland] to enforce in Northern Ireland the provisions of any order under section 22 of this Act.
- (2) In the application of this Part of this Act to Northern Ireland—
  - (a) section 27 shall not apply;

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: Fair Trading Act 1973 is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) in sections 28 and 29, any reference to a local weights and measures authority shall be construed as a reference to [<sup>F15</sup>the Department of Commerce for Northern Ireland], and the provisions of sections 30 to 32 shall be construed accordingly;
- (c) in section 29(3), any reference to a justice of the peace shall be construed as a reference to a resident magistrate; and
- <sup>F16</sup>(d) .....

**Textual Amendments**

**F15** Words substituted by virtue of [Northern Ireland Constitution Act 1973 \(c. 36\), Sch. 5 para. 8\(1\)](#)

**F16** S. 33(2)(d) repealed (31.1.1997) by [1996 c. 23, s. 107\(2\), Sch. 4 \(with s. 81\(2\)\); S.I. 1996/3146, art. 3](#)

### PART III

#### ADDITIONAL FUNCTIONS OF DIRECTOR FOR PROTECTION OF CONSUMERS

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

**C17** Pts. III, IV (ss. 34-56) amended (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\), ss. 31\(4\)\(a\), 35\(4\), 223\(2\)](#) (with [ss. 82\(3\), 186\(1\), 188, 222\(1\), Sch. 14 para. 6](#)).

Pt. III modified (1.4.1992) by [S.I. 1992/231 \(N.I. 1\), art. 46\(1\)](#); [S.R. 1992/117, art.3\(1\)](#)

Pt. III (ss. 34-43) modified (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\), s. 43\(1\)](#)

Pt. III (ss. 34-43) modified (E.W.) by [Water Act 1989 \(c. 15, SIF 130\), s. 28\(1\)](#)

Pt. III (ss. 34-43) modified by [Telecommunications Act 1984 \(c. 12, SIF 96\), s. 50\(1\)](#)

Pt. III (ss. 34-43): certain functions transferred (E.W.S.) (1.4.1994) by [1993 c. 43, s. 67\(1\)](#); [S.I. 1994/571, art. 5](#)

Pt. III (ss. 34-43) amended (E.W.S.) (1.4.1994) by [1993 c. 43, s. 67\(1\)](#); [S.I. 1994/571, art. 5](#)

Pt. III (ss. 34-43) modified (E.W.S.) (1.3.1996) by [1986 c. 44, s. 36A\(1\)](#) (as inserted (1.3.1996) by [1995 c. 45, s. 10\(1\), Sch. 3 para. 43](#); [S.I. 1996/218, art. 2](#))

Pt. III (ss. 34-43) modified (N.I.) (10.6.1996) by [S.I. 1996/275 \(N.I. 2\), art. 23\(1\)](#) (with [Sch. 7 paras. 2, 3\(2\)](#)); [S.R. 1996/216, art. 2](#)

Pt. III (ss. 34-43) modified (1.6.2001) by [S.I. 2001/1422, reg. 3, Sch. 2](#)

<sup>F17</sup>**34 Action by Director with respect to course of conduct detrimental to interests of consumers.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 5\(3\), Sch. 26](#); [S.I. 2003/1397, art. 2\(1\), Sch. \(with arts. 6, 7, 8\)](#)

<sup>F17</sup>**35 Proceedings before Restrictive Practices Court.**

.....

*Status: Point in time view as at 22/07/2004.*

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**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**<sup>F17</sup>36 Evidence in proceedings under s. 35.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**<sup>F17</sup>37 Order of, or undertaking given to, Court in proceedings under s. 35.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**<sup>F17</sup>38 Provisions as to persons consenting to or conniving at courses of conduct detrimental to interests of consumers.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**<sup>F17</sup>39 Order of, or undertaking given to, Court in proceedings under s. 38.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**<sup>F17</sup>40 Provisions as to interconnected bodies corporate.**

.....

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**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**F17 41 Concurrent Jurisdiction of other courts in certain cases.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**F17 41A Meaning of “relevant Court”.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

**F17 42 Appeals from decisions or orders of courts under Part III.**

.....

**Textual Amendments**

**F17** Ss. 34-42 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 5(3), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 7, 8)

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

(1) The paragraph set out in the next following subsection shall be inserted—

- (a) ..... **F18**
- (b) ..... **F19**
- (c) ..... **F20**

(2) ..... **F21**

**Textual Amendments**

- F18** S. 43(1)(a) repealed by Legal Aid Act 1974 (c. 4), **Sch. 5 Pt. I**
- F19** S. 43(1)(b) repealed by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 45(3), **Sch. 5**
- F20** S. 43(1)(c) repealed by S.I. 1981/228 (N.I. 8), art. 42(2), **Sch. 4**
- F21** S. 43(2) repealed by S.I. 1981/228 (N.I. 8), art. 42(2), **Sch. 4** and by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 45(3), **Sch. 5**

*Status: Point in time view as at 22/07/2004.*

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

**C18** The text of S. 43 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**PART IV**

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

*Powers for Director to require information*

**<sup>F22</sup>44 General power for Director to require information.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8)

**45** .....

**<sup>F22</sup>46 Supplementary provisions as to requirements to furnish information.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8)

*Monopoly references*

**<sup>F22</sup>47 General provisions as to monopoly references**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8)

*Status: Point in time view as at 22/07/2004.*

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**F2248 Monopoly reference limited to the facts.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2249 Monopoly reference not limited to the facts.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2250 Monopoly references by Director.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2251 Monopoly references by Ministers.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2252 Variation of monopoly reference.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)



*Status: Point in time view as at 22/07/2004.*

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**F2253 Publication of monopoly references and variations, and of directions relating to them.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2254 Report of Commission on monopoly reference.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2255 Time-limit for report on monopoly reference.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F2256 Order of appropriate Minister on report on monopoly reference.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

*Undertakings as alternative to monopoly reference by Director*

**F2256A Proposals by Director.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

*Status: Point in time view as at 22/07/2004.*

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**F22 56B Proposals under section 56A: preparatory steps.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F22 56C Proposals under section 56A: exclusion of sensitive information.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F22 56D Acceptance by Secretary of State of proposals under section 56A.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F22 56E Review of undertakings.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F22 56F Release, variation and replacement of undertakings.**

.....

**Textual Amendments**

**F22** Ss. 44-56G repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**F22 56G Publication of undertakings etc.**

.....

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**Textual Amendments**

- F22** Ss. 44-56G repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with arts. 6, 8)

**PART V**

MERGERS

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

- C19** Pt. V (ss. 57-77) restricted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. **30(4)**  
**C20** Pt. V (ss. 57-77) applied (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), **ss. 29(9)(b)**, 30(6)  
**C21** Pt. V (ss. 57-77) restricted (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 34(4)**, 223(2) (with **ss. 82(3)**, 186(1), 188, 222(1), **Sch.** 14 para. 6).  
**C22** Pt. V (ss. 57-77) applied (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 35(2)**, 223(2) (with **ss. 82(3)**, 186(1), 188, 222(1), **Sch.** 14 para. 6).

*Newspaper merger references*

- <sup>F23</sup>**57** **Meaning of “newspaper”, “transfer of newspaper or of newspaper assets” and related expressions.**
- .....

**Textual Amendments**

- F23** **Ss. 57-62** repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 373, 411(2), **Sch. 19(1)** (with **Sch.** 18); S.I. 2003/3142, art. 3(1), **Sch.** 1 (with art. 11)

- <sup>F23</sup>**58** **Prohibition of certain newspaper mergers.**
- .....

**Textual Amendments**

- F23** **Ss. 57-62** repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 373, 411(2), **Sch. 19(1)** (with **Sch.** 18); S.I. 2003/3142, art. 3(1), **Sch.** 1 (with art. 11)

- <sup>F23</sup>**59** **Newspaper merger reference.**
- .....

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#### Textual Amendments

**F23** Ss. 57-62 repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 373, 411(2), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### <sup>F23</sup> **60 Time-limit for report on newspaper merger reference.**

.....

#### Textual Amendments

**F23** Ss. 57-62 repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 373, 411(2), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### <sup>F23</sup> **61 Report on newspaper merger reference.**

.....

#### Textual Amendments

**F23** Ss. 57-62 repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 373, 411(2), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### <sup>F23</sup> **62 Enforcement provisions relating to newspaper mergers.**

.....

#### Textual Amendments

**F23** Ss. 57-62 repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 373, 411(2), **Sch. 19(1)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### *Other merger references*

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

- [<sup>F24</sup>(1) Sections 64 [<sup>F25</sup>to 75K of this Act shall not have effect in relation to]newspaper merger references; and accordingly in those sections “merger reference” shall be construed—
- (a) as not including a reference made under section 59 of this Act, but
  - (b) as including any merger reference relating to a transfer of a newspaper or of newspaper assets, if the reference is made under section 64 or section 75 of this Act in a case falling within section 59(2) of this Act.
- (2) In the following provisions of this Part of this Act “enterprise” means the activities, or part of the activities, of a business.]

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#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F25** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 3

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

- C23** S. 63(2) (definition of "enterprise") applied (E.W.)(01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 35(1), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).

### 64 Merger situation qualifying for investigation.

- [<sup>F24</sup>(1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that two or more enterprises (in this section referred to as “the relevant enterprises”), of which one at least was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom, have, at a time or in circumstances falling within subsection (4) of this section, ceased to be distinct enterprises, and that either—
- (a) as a result, the condition specified in subsection (2) or in subsection (3) of this section prevails, or does so to a greater extent, with respect to the supply of goods or services of any description, or
  - (b) the value of the assets taken over exceeds [<sup>F26</sup>70 million].
- (2) The condition referred to in subsection (1)(a) of this section, in relation to the supply of goods of any description, is that at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom, either—
- (a) are supplied by one and the same person or are supplied to one and the same person, or
  - (b) are supplied by the persons by whom the relevant enterprises (so far as they continue to be carried on) are carried on, or are supplied to those persons.
- (3) The condition referred to in subsection (1)(a) of this section, in relation to the supply of services of any description, is that the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is, to the extent of at least one-quarter, either—
- (a) supply by one and the same person, or supply for one and the same person, or
  - (b) supply by the persons by whom the relevant enterprises (so far as they continue to be carried on) are carried on, or supply for those persons.
- (4) For the purposes of subsection (1) of this section enterprises shall be taken to have ceased to be distinct enterprises at a time or in circumstances falling within this subsection if either—
- (a) they did so not earlier than [<sup>F27</sup>four months]before the date on which the merger reference relating to them is to be made, or
  - (b) they did so under or in consequence of arrangements or transactions which were entered into without prior notice being given to the Secretary of State or to the Director of material facts about the proposed arrangements or transactions and in circumstances in which those facts had not been made public, and notice of those facts was not given to the Secretary of State or

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to the Director or made public more than [<sup>F27</sup>four months] before the date mentioned in the preceding paragraph.

- (5) In determining whether to make a merger reference to the Commission the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a determination as soon as is reasonably practicable.
- (6) On making a merger reference, the Secretary of State shall arrange for it to be published in such manner as he thinks most suitable for bringing it to the attention of persons who in his opinion would be affected by it.
- (7) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for the sum specified in subsection (1)(b) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other sum (not being less than £5 million) as is specified in the order.
- (8) The fact that two or more enterprises have ceased to be distinct enterprises in the circumstances described in subsection (1) of this section (including in those circumstances the result specified in paragraph (a), or fulfilment of the condition specified in paragraph (b), of that subsection) shall, for the purposes of this Act, be regarded as creating a merger situation qualifying for investigation; and in this Act “merger situation qualifying for investigation” and any reference to the creation of such a situation shall be construed accordingly.
- (9) In this section “made public” means so publicised as to be generally known or readily ascertainable.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F26** Words in s. 64(1)(b) substituted (9.2.1994) by S.I. 1994/72, art. 2 (subject to the proviso that this variation shall not have effect in relation to any merger reference which was made to the Monopolies and Mergers Commission before 9.2.1994)
- F27** Words in s. 64(4)(a)(b) substituted (19.3.1996) by S.I. 1996/345, art. 2

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

- C24** S. 64 applied (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 30(5)(b)(ii)
- C25** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 65 Enterprises ceasing to be distinct enterprises.

- [<sup>F24</sup>(1) For the purposes of this Part of this Act any two enterprises shall be regarded as ceasing to be distinct enterprises if either—
- (a) they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control), or
  - (b) either of the enterprises ceases to be carried on at all and does so in consequence of any arrangements or transaction entered into to prevent competition between the enterprises.

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- (2) For the purposes of the preceding subsection enterprises shall (without prejudice to the generality of the words “common control” in that subsection) be regarded as being under common control if they are—
- (a) enterprises of interconnected bodies corporate, or
  - (b) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control, or
  - (c) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.
- (3) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise, but without having a controlling interest in that body corporate or in that enterprise, may for the purposes of subsections (1) and (2) of this section be treated as having control of it.
- (4) For the purposes of subsection (1)(a) of this section, in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if—
- (a) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate, or
  - (b) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 26](#) (with [Sch. 24](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with arts. [3\(1\), 4, 6, 8](#)); [S.I. 2004/3233, art. 2, Sch.](#) (with arts. [3-5](#))

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

**C26** S. 65 applied (with modifications) (11.1.1999) by [1998 c. 41, ss. 3\(1\)\(a\), 19\(1\)\(a\), Sch. 1 Pt. I paras. 1\(4\), 2\(2\)](#) (with [s. 73](#)); [S.I. 1998/3166, art. 2, Sch.](#)

**C27** Ss. 64-77 modified (E.W.S.) (1.4.1994) by [1993 c. 43, s. 66\(3\)](#); [S.I. 1994/571, art. 5](#)

## 66 Time when enterprises cease to be distinct.

- [<sup>F24</sup>(1) Where under or in consequence of the same arrangements or transaction, or under or in consequence of successive arrangements or transactions between the same parties or interests, successive events to which this subsection applies occur within a period of two years, then for the purposes of a merger reference those events may, if the Secretary of State [<sup>F28</sup>or the Commission] thinks fit, be treated as having occurred simultaneously on the date on which the latest of them occurred.
- (2) The preceding subsection applies to any event whereby, under or in consequence of the arrangements or the transaction or transactions in question, any enterprises cease as between themselves to be distinct enterprises.
- (3) For the purposes of subsection (1) of this section any arrangements or transactions may be treated by the Secretary of State [<sup>F28</sup>or the Commission] as arrangements or

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transactions between the same interests if it appears to him to be appropriate that they should be so treated, having regard to the persons who are substantially concerned in them.

- (4) Subject to the preceding provisions of this section [<sup>F29</sup>and to section 66A of this Act], the time at which any two enterprises cease to be distinct enterprises, where they do so under or in consequence of any arrangements or transaction not having immediate effect, or having immediate effect in part only, shall be taken to be the time when the parties to the arrangements or transaction become bound to such extent as will result, on effect being given to their obligations, in the enterprises ceasing to be distinct enterprises.
- (5) In accordance with subsection (4) of this section (but without prejudice to the generality of that subsection) for the purpose of determining the time at which any two enterprises cease to be distinct enterprises no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F28** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 4(a), **10**
- F29** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 4(b), **10**

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

- C28** S. 66 applied (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 29(9)
- C29** S. 66 applied (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 35(2), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C30** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

#### [<sup>F30</sup>66A Obtaining control by stages.

[<sup>F24</sup>(1) Where an enterprise is brought under the control of a person or group of persons in the course of two or more transactions (referred to in this section as a “series of transactions”) falling within subsection (2) of this section, those transactions may, if the Secretary of State or, as the case may be, the Commission thinks fit, be treated for the purposes of a merger reference as having occurred simultaneously on the date on which the latest of them occurred.

- (2) The transactions falling within this subsection are—
- (a) any transaction which—
    - (i) enables that person or group of persons directly or indirectly to control or materially to influence the policy of any person carrying on the enterprise,
    - (ii) enables that person or group of persons to do so to a greater degree, or
    - (iii) is a step (whether direct or indirect) towards enabling that person or group of persons to do so, and
  - (b) any transaction whereby that person or group of persons acquires a controlling interest in the enterprise or, where the enterprise is carried on by a body corporate, in that body corporate.



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- (3) Where a series of transactions includes a transaction falling within subsection (2)(b) of this section, any transaction occurring after the occurrence of that transaction is to be disregarded for the purposes of subsection (1) of this section.
- (4) Where the period within which a series of transactions occurs exceeds two years, the transactions that may be treated as mentioned in subsection (1) of this section are any of those transactions that occur within a period of two years.
- (5) Sections 65(2) to (4) and 77(1) and (4) to (6) of this Act apply for the purposes of this section to determine whether an enterprise is brought under the control of a person or group of persons and whether a transaction falls within subsection (2) of this section as they apply for the purposes of section 65 of this Act to determine whether enterprises are brought under common control.
- (6) In determining for the purposes of this section the time at which any transaction occurs, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.]]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F30** S. 66A inserted by Companies Act 1989 (c. 40, SIF 27), s. 150(1)(2)

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

- C31** By Water Act 1989 (c. 15, SIF 130), s. 29(9) s. 66A is expressed to be applied (E.W.)
- C32** S. 66A applied (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 35(2), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).  
Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 67 Valuation of assets taken over.

- [<sup>F24</sup>(1) The provisions of this section shall have effect for the purposes of section 64(1)(b) of this Act.
- (2) Subject to subsection (4) of this section, the value of the assets taken over—
    - (a) shall be determined by taking the total value of the assets employed in, or appropriated to, the enterprises which cease to be distinct enterprises, except [<sup>F31</sup>(i) any enterprise which remains under the same ownership and control, or  
(ii) if none of the enterprises remains under the same ownership and control, the enterprise having the assets with the highest value, and]
    - (b) shall be so determined by reference to the values at which, on the enterprises ceasing to be distinct enterprises or (if they have not then done so) on the making of the merger reference to the Commission, the assets stand in the books of the relevant business, less any relevant provisions for depreciation, renewals or diminution in value.
  - (3) For the purposes of subsection (2) of this section any assets of a body corporate which, on a change in the control of the body corporate or of any enterprise of it, are dealt

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with in the same way as assets appropriated to any such enterprise shall be treated as appropriated to that enterprise.

- (4) Where in accordance with subsection (1) of section 66 [<sup>F32</sup>or subsection (1) of section 66A] of this Act events to which [<sup>F33</sup>either of those subsections] applies are treated as having occurred simultaneously, subsection (2) of this section shall apply with such adjustments as appear to the Secretary of State or to the Commission to be appropriate.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F31** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 5(1), 10
- F32** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 5(2), 10
- F33** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 5(2), 10

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

- C33** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5
- C34** Section 67(3) applied (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 29(6)(d)–(8)
- C35** S. 67(3)(4) applied (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 33(3)(d), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C36** S. 67(4) applied (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 29(6)(d)–(8)

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

- [<sup>F24</sup>(1) In relation to goods or services of any description which are the subject of different forms of supply—
- (a) references in subsection (2) of section 64 of this Act to the supply of goods, or
  - (b) references in subsection (3) of that section to the supply of services,
- shall be construed in whichever of the following ways appears to the Secretary of State or the Commission, as the case may be, to be appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.
- (2) For the purposes of the preceding subsection the Secretary of State or the Commission may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Secretary of State or of the Commission, as the case may be, ought for the purposes of that subsection to be treated as a material difference.
- (3) For the purpose of determining whether the proportion of one-quarter mentioned in subsection (2) or subsection (3) of section 64 of this Act is fulfilled with respect to goods or services of any description, the Secretary of State or the Commission, as the case may be, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to the Secretary of State or the Commission to be most suitable in all the circumstances.

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- (4) The criteria for determining when goods or services can be treated, for the purposes of section 64 of this Act, as goods or services of a separate description shall be such as in any particular case the Secretary of State [<sup>F34</sup>or, as the case may be, the Commission] thinks most suitable in the circumstances of that case.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F34** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 6, 10

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

- C37** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 69 Different kinds of merger references.

- [<sup>F24</sup>(1) Subject to the following provisions of this Part of this Act, on a merger reference the Commission shall investigate and report on the questions—
- (a) whether a merger situation qualifying for investigation has been created, and
  - (b) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.
- (2) A merger reference may be so framed as to require the Commission, in relation to the question whether a merger situation qualifying for investigation has been created, to exclude from consideration paragraph (a) of subsection (1) of section 64 of this Act, or to exclude from consideration paragraph (b) of that subsection, or to exclude one of those paragraphs if the Commission find the other satisfied.
- (3) In relation to the question whether any such result as is mentioned in section 64(1)(a) of this Act has arisen, a merger reference may be so framed as to require the Commission to confine their investigation to the supply of goods or services in a specified part of the United Kingdom.
- (4) A merger reference may require the Commission, if they find that a merger situation qualifying for investigation has been created, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation operates, or may be expected to operate, against the public interest.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

- C38** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

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

[<sup>F24</sup>(1) Every merger reference shall specify a period (not being longer than six months beginning with the date of the reference) within which a report on the reference is to be made; and a report of the Commission on a merger reference shall not have effect, and no action shall be taken in relation to it under this Act, unless the report is made before the end of that period or of such further period (if any) as may be allowed by the Secretary of State in accordance with the next following subsection.

(2) The Secretary of State shall not allow any further period for a report on a merger reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the period specified in the reference; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.]

### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26** (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

### Modifications etc. (not altering text)

**C39** S. 70 applied with modifications (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 14(7), 223(2)** (with **ss. 82(3), 186(1), 188, 222(1)**, Sch. 14 para. 6).

S. 70 extended with modifications (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 15(8)**; S.R. 1992/117, **art.3(1)**

S. 70 applied (with modifications) (1.2.2001) by 2000 c. 38, **s. 12(9)(10)(a)** (with s. 106); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)

S. 70 applied (with modifications) (1.10.2001) by 1989 c. 29, **s. 56C** (as inserted (1.10.2001) by 2000 c. 27, **ss. 43, 104(1)(2)(6)**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

S. 70 applied (with modifications) (1.10.2001) by 1986 c. 44, **s. 41E(7)(8)** (as inserted (1.10.2001) by 2000 c. 27, **ss. 88, 104(1)(2)(6)**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

S. 70 applied (with modifications) (30.11.2000) by 1993 c. 43, **Sch. 4A para. 10(1)(2)(a)** (as inserted (30.11.2000) by 2000 c. 38, **ss. 231(2), 275(4)**, **Sch. 24**)

S. 70 applied (with modifications) (26.3.2001) by 2000 c. 26, **s. 20(1)(2)(a)**; S.I. 2000/2957, art. 2(3), **Sch. 3**

S. 70 extended (4.4.1980) by Competition Act 1980 (c. 21), **s. 11(9)** and extended *ibid.*, ss. 7(6), 33(5)

S. 70 applied with modifications by Telecommunications Act 1984 (c. 12, SIF 96), **s. 13(9)**

S. 70 applied with modifications (E.W.S.) by Airports Act 1986 (c. 31, SIF 9), **s. 44(3)**

S. 70 applied with modifications (E.W.) by Gas Act 1986 (c. 44, SIF 44:2), **ss. 24(7), 48(3)(4)**

S. 70 applied with modifications (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 16(7)**

S. 70 applied with modifications (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1) s. 12(8)

S. 70 applied (with modifications) (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 13(8)(9)**; S.I. 1994/571, **art. 5**

Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 66(3)**; S.I. 1994/571, **art. 5**

S. 70 applied (with modifications) (N.I.) (1.9.1995) by S.I. 1994/426 (N.I. 1), **art. 35(3)**; S.R. 1995/294, art. 2, **Sch.**

S. 70 applied (with modifications) (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 15(9)**; S.R. 1996/216, **art. 2**

S. 70 applied (with modifications) (1.4.1999) by 1984 c. 12, **s. 13(9)(9A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 9(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

S. 70 applied (with modifications) (1.4.1999) by 1986 c. 44, **s. 24(7)(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 10(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

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- S. 70 applied (with modifications) (1.4.1999) by 1989 c. 29, **s. 12(8)(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 12(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1991 c. 56, **s. 14(7)(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1993 c. 43, **s. 13(8)(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 15(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1992/231 (N.I. 1), **art. 15(8)(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. V para. 17(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1996/275 (N.I. 2), **art. 15(9)(9A)** (with **Sch. 7 paras. 2, 3(2)**) (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. V para. 18(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1980 c. 21, **s. 11(9A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 12 para. 4(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1986 c. 31, **s. 44(3)(3A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 12 para. 7(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1994/426 (N.I. 1), **art. 35(3)(3A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 12 para. 20(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (24.11.1999) by S.I. 1999/3088, **regs. 7, 8**

## 71 Variation of certain merger references.

- [<sup>F24</sup>(1) Subject to the following provisions of this section, the Secretary of State may at any time vary a merger reference . . . <sup>F35</sup>
- (2) . . . . . <sup>F36</sup>
- (3) Without prejudice to the powers of the Secretary of State under section 70 of this Act, a merger reference shall not be varied so as to specify a period within which a report on the reference is to be made which is different from the period specified in the reference in accordance with that section.]

### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26** (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F35** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, Sch. 20 paras. 7(a), 10, **Sch. 24**
- F36** S.71(2) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, Sch. 20 paras. 7(b), 10, **Sch. 24**

### Modifications etc. (not altering text)

- C40** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 66(3)**; S.I. 1994/571, **art. 5**

## 72 Report of Commission on merger reference.

- [<sup>F24</sup>(1) In making their report on a merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and
  - (b) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,

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as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.

- (2) Where on a merger reference the Commission find that a merger situation qualifying for investigation has been created and that the creation of that situation operates or may be expected to operate against the public interest (or, in a case falling within subsection (4) of section 69 of this Act, find that one or more elements in or consequences of that situation which were specified in the reference in accordance with that subsection so operate or may be expected so to operate) the Commission shall specify in their report the particular effects, adverse to the public interest, which in their opinion the creation of that situation (or, as the case may be, those elements in or consequences of it) have or may be expected to have; and the Commission—
- (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and
  - (b) may, if they think fit, include in their report recommendations as to such action.
- (3) In paragraph (a) of subsection (2) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—
- (a) by one or more Ministers (including [<sup>F37</sup>Northern Ireland departments]) or other public authorities, or
  - (b) by one or more persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises.]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F37** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), Sch. 1 para. 2(1)(b)(4)

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

**C41** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

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

- [<sup>F24</sup>(1) The provisions of this section shall have effect where a report of the Commission on a merger reference has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—
- (a) include conclusions to the effect that a merger situation qualifying for investigation has been created and that its creation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest, and
  - (b) specify particular effects, adverse to the public interest, which in the opinion of the Commission the creation of that situation, or (as the case may be) those elements in or consequences of it, have or may be expected to have.

*Status: Point in time view as at 22/07/2004.*

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- (2) In the circumstances mentioned in the preceding subsection the Secretary of State may by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he may consider it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection; and those powers may be so exercised to such extent and in such manner as the Secretary of State considers requisite for that purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the Secretary of State shall take into account any recommendations included in the report of the Commission in pursuance of section 72(2)(b) of this Act and any advice given by the Director under section 88 of this Act.]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

**C42** S. 73 modified (1.4.1999) by 1998 c. 41, s. 45(7), Sch. 7 Pt. II para. 20(2)(a) (with s. 73); S.I. 1999/505, art. 2, Sch. 2

**C43** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

**C44** S.73(2) amended by Copyright, Designs and Patents Act 1988 (c.48, SIF 67A), ss. 144(2), 238(2)

## 74 Interim order in respect of merger reference.

- [<sup>F24</sup>(1) Where a merger reference has been made to the Commission, . . . <sup>F38</sup>, then, with a view to preventing action to which this subsection applies, the Secretary of State, subject to subsection (3) of this section, may by order made by statutory instrument—
- (a) prohibit or restrict the doing of things which in his opinion would constitute action to which this subsection applies, or
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets, or
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner, or
  - (d) exercise any of the powers which, by virtue of [<sup>F39</sup>paragraph 12 and 12A] of Schedule 8 to this Act, are exercisable by an order under section 73 of this Act.
- (2) In relation to a merger reference the preceding subsection applies to any action which might prejudice the reference or impede the taking of any action under this Act which may be warranted by the Commission's report on the reference.
- (3) No order shall be made under this section in respect of a merger reference after whichever of the following events first occurs, that is to say—
- (a) the time (including any further period) allowed to the Commission for making a report on the reference expires without their having made such a report;
  - (b) the period of forty days beginning with the day on which a report of the Commission on the reference is laid before Parliament expires.

*Status: Point in time view as at 22/07/2004.*

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- (4) An order under this section made in respect of a merger reference (if it has not previously ceased to have effect) shall cease to have effect on the occurrence of whichever of those events first occurs, but without prejudice to anything previously done under the order.
- (5) Subsection (4) of this section shall have effect without prejudice—
- (a) to the operation, in relation to any such order, of section 134(1) of this Act, or
  - (b) to the operation of any order made under section 73 of this Act which exercises the same or similar powers to those exercised by the order under this section.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F38** S.74(1) Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, Sch. 20 paras. 8(a), 10, Sch. 24
- F39** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 8(b), 10

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

- C45** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 75 Reference in anticipation of merger.

- [<sup>F24</sup>(1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.
- (2) Subject to the following provisions of this section, on a merger reference under this section the Commission shall proceed in relation to the prospective and (if events so require) the actual results of the arrangements proposed or made as, in accordance with the preceding provisions of this Part of this Act, they could proceed if the arrangements in question had actually been made, and the results in question had followed immediately before the date of the reference under this section.
- (3) A merger reference under this section may require the Commission, if they find that a merger situation qualifying for investigation has been created, or will be created if the arrangements in question are carried into effect, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation might be expected to operate against the public interest.
- (4) In relation to a merger reference under this section, sections 66, [<sup>F40</sup>66A], 67, 69, 71, 72, 73 and 74 of this Act shall apply subject to the following modifications, that is to say—
- [<sup>F41</sup>(a) section 66 shall apply, where an event by which any enterprises cease as between themselves to be distinct enterprises will occur if the arrangements are carried into effect, as if the event had occurred immediately before the date of the reference;



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- (aa) section 66A shall apply, where a transaction falling within subsection (2) of that section will occur if the arrangements are carried into effect, as if the transaction had occurred immediately before the date of the reference;
  - (b) in section 67(4) the references to subsection (1) of section 66 and subsection (1) of section 66A shall be construed as references to those subsections as modified in accordance with paragraph (a) or (aa) of this subsection;]
  - (c) in section 69, subsection (1) shall be construed as modified by subsection (2) of this section; in subsections (2) and (3) any reference to the question whether a merger situation qualifying for investigation has been created, or whether a result mentioned in section 64(1)(a) of this Act has arisen, shall be construed as including a reference to the question whether such a situation will be created or such a result will arise if the arrangements in question are carried into effect; and subsection (4) of that section shall not apply;
  - (d) in section 71, in section 72(2) and in section 74(1), the references to section 69(4) of this Act shall be construed as references to subsection (3) of this section; and
  - (e) in section 73(1), the reference to conclusions to the effect that a merger situation qualifying for investigation has been created shall be construed as including a reference to conclusions to the effect that such a situation will be created if the arrangements in question are carried into effect.
- [<sup>F42</sup>(4A) Where a merger reference is made under this section, it shall be unlawful, except with the consent of the Secretary of State under subsection (4C) of this section—
- (a) for any person carrying on any enterprise to which the reference relates or having control of any such enterprise or for any subsidiary of his, or
  - (b) for any person associated with him or for any subsidiary of such a person, directly or indirectly to acquire, at any time during the period mentioned in subsection (4B) of this section, an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.
- (4B) The period referred to in subsection (4A) of this section is the period beginning with the announcement by the Secretary of State of the making of the merger reference concerned and ending—
- (a) where the reference is laid aside at any time, at that time,
  - (b) where the time (including any further period) allowed to the Commission for making a report on the reference expires without their having made such a report, on the expiration of that time,
  - (c) where a report of the Commission on the reference not including such conclusions as are referred to in section 73(1)(b) of this Act is laid before Parliament, at the end of the day on which the report is so laid,
  - (d) where a report of the Commission on the reference including such conclusions is laid before Parliament, at the end of the period of forty days beginning with the day on which the report is so laid,
- and where such a report is laid before each House on different days, it is to be treated for the purposes of this subsection as laid on the earlier day.
- (4C) The consent of the Secretary of State—
- (a) may be either general or special,
  - (b) may be revoked by the Secretary of State, and

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- (c) shall be published in such way as, in the opinion of the Secretary of State, to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the Secretary of State's opinion publication is not necessary for that purpose.
- (4D) Section 93 of this Act applies to any contravention or apprehended contravention of subsection (4A) of this section as it applies to a contravention or apprehended contravention of an order to which section 90 of this Act applies.
- (4E) Subsections (4F) to (4K) of this section apply for the interpretation of subsection (4A).
- (4F) The circumstances in which a person acquires an interest in shares include those where—
- (a) he enters into a contract to acquire the shares (whether or not for cash),
  - (b) not being the registered holder, he acquires a right to exercise, or to control the exercise of, any right conferred by the holding of the shares, or
  - (c) he acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares or assumes an obligation to acquire such an interest,
- but does not include those where he acquires an interest in pursuance of an obligation assumed before the announcement by the Secretary of State of the making of the merger reference concerned.
- (4G) The circumstances in which a person acquires a right mentioned in subsection (4F) of this section—
- (a) include those where he acquires a right or assumes an obligation the exercise or fulfilment of which would give him that right, but
  - (b) does not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members,
- and references to rights and obligations in this subsection and subsection (4F) of this section include conditional rights and conditional obligations.
- (4H) Any reference to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.
- (4J) Sections 65(2) to (4) and 77(1) and (4) to (6) of this Act apply to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 65 of this Act to determine whether enterprises are brought under common control.
- (4K) "Subsidiary" has the meaning given by section 736 of the Companies Act 1985, but that section and section 736A of that Act also apply to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company and references to a subsidiary in subsections (8) and (9) of section 736A as so applied are to be read accordingly.
- (4L) In this section—
- "company" includes any body corporate, and
  - "share" means share in the capital of a company, and includes stock.

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- (4M) Nothing in subsection (4A) of this section makes anything done by a person outside the United Kingdom unlawful unless he is—
- (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas),
  - (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or
  - (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons.]
- (5) If, in the course of their investigations on a merger reference under this section, it appears to the Commission that the proposal to make arrangements such as are mentioned in the reference has been abandoned, the Commission—
- (a) shall, if the Secretary of State consents, lay the reference aside, but
  - (b) shall in that case furnish to the Secretary of State such information as he may require as to the results until then of the investigations.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#) (with [Sch. 24](#)); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, [Sch.](#) (with arts. 3-5)
- F40** “66A” inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 paras. 9\(a\)](#), **10**
- F41** S. 75(4)(a)(aa)(b) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 paras. 9\(b\)](#), **10**
- F42** S. 75(4A)–(4M) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. **149**

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

- C46** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. **66(3)**; S.I. 1994/571, [art. 5](#)
- C47** S. 75(5) applied (1.4.1999) by 1998 c. 41, s. 45(7), [Sch. 7 Pt. II para. 15\(7\)\(b\)](#) (with s. 73): S.I. 1999/505, art. 2, [Sch. 2](#)

<sup>F43</sup> *Restriction on power to make merger reference where prior notice has been given*

#### Textual Amendments

- F43** Ss. 75A–75F inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. **146**

### **75A General rule where notice given by acquirer and no reference made within period for considering notice.**

- [<sup>F24</sup>(1) Notice may be given to the Director by a person authorised by regulations to do so of proposed arrangements which might result in the creation of a merger situation qualifying for investigation.
- (2) The notice must be in the prescribed form and state that the existence of the proposal has been made public.
  - (3) If the period for considering the notice expires without any reference being made to the Commission with respect to the notified arrangements, no reference may be made under this Part of this Act to the Commission with respect to those arrangements or to

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the creation or possible creation of any merger situation qualifying for investigation which is created in consequence of carrying those arrangements into effect.

- (4) Subsection (3) of this section is subject to sections 75B(5) and 75C of this Act.
- (5) A notice under subsection (1) of this section is referred to in sections 75B to 75F of this Act as a “merger notice”.]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

**C48** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

### 75B The role of the Director.

- [<sup>F24</sup>(1) The Director shall, when the period for considering any merger notice begins, take such action as he considers appropriate to bring the existence of the proposal, the fact that the merger notice has been given and the date on which the period for considering the notice may expire to the attention of those who in his opinion would be affected if the arrangements were carried into effect.
- (2) The period for considering a merger notice is the period of twenty days, determined in accordance with subsection (9) of this section, beginning with the first day after—
- (a) the notice has been received by the Director, and
  - (b) any fee payable to the Director in respect of the notice has been paid.
- (3) The Director may, and shall if required to do so by the Secretary of State, by notice to the person who gave the merger notice [<sup>F44</sup>extend the period mentioned in subsection (2) of this section by a further fifteen days].
- (4) The Director may by notice to the person who gave the merger notice request him to provide the Director within such period as may be specified in the notice with such information as may be so specified.
- (5) If the Director gives to the person who gave the merger notice (in this subsection referred to as “the relevant person”) a notice stating that the Secretary of State is seeking undertakings under section 75G of this Act, section 75A(3) of this Act does not prevent a reference being made to the Commission unless—
- (a) after the Director has given that notice, the relevant person has given a notice to the Director stating that he does not intend to give such undertakings, and
  - (b) the period of ten days beginning with the first day after the notice under paragraph (a) of this subsection was received by the Director has expired.
- (6) A notice by the Director under subsection (3), (4) or (5) of this section must either be given to the person who gave the merger notice before the period for considering the merger notice expires or be sent in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that period expires.

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- (7) The Director may, at any time before the period for considering any merger notice expires, reject the notice if—
- (a) he suspects that any information given in respect of the notified arrangements, whether in the merger notice or otherwise, by the person who gave the notice or any connected person is in any material respect false or misleading,
  - (b) he suspects that it is not proposed to carry the notified arrangements into effect, <sup>F45</sup>or]
  - (c) any prescribed information is not given in the merger notice or any information requested by notice under subsection (4) of this section is not provided within the period specified in the notice.
- <sup>F45</sup>or,
- (d) it appears to him that the notified arrangements are, or if carried into effect would result in, a concentration with a Community dimension within the meaning of Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings.]
- (8) If—
- (a) under subsection <sup>F44</sup>(3)]of this section the period for considering a merger notice has been extended by a further fifteen days, but
  - (b) the Director has not made any recommendation to the Secretary of State under section 76(b) of this Act as to whether or not it would in the Director’s opinion be expedient for the Secretary of State to make a reference to the Commission with respect to the notified arrangements,
- then, during the last five of those fifteen days, the power of the Secretary of State to make a reference to the Commission with respect to the notified arrangements is not affected by the absence of any such recommendation.
- (9) In determining any period for the purposes of subsections (2), (3) and (5) of this section no account shall be taken of—
- (a) Saturday, Sunday, Good Friday and Christmas Day, and
  - (b) any day which is a bank holiday in England and Wales.]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F44** Words in s. 75B(3)(8)(a) substituted (18.8.1994) by S.I. 1994/1934, reg. 3
- F45** By S.I. 1990/1563, reg. 2 it is provided that for the purpose of determining the effect of giving a merger notice and the steps which may be or are to be taken by any person in connection with such a notice in a case in which the arrangements in question are or would result in a concentration with a Community dimension, section 75B is amended by omitting the word “or” at the end of paragraph (b) of subsection (7) and adding the word “or” and para. (d) at the end of that subsection

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

- C49** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3), 154(2); S.I. 1994/571, art. 5

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## 75C Cases where power to refer unaffected.

[<sup>F24</sup>(1) Section 75A(3) of this Act does not prevent any reference being made to the Commission if—

- (a) before the end of the period for considering the merger notice, it is rejected by the Director under section 75B(7) of this Act,
- (b) before the end of that period, any of the enterprises to which the notified arrangements relate cease to be distinct from each other,
- (c) any information (whether prescribed information or not) that—
  - (i) is, or ought to be, known to the person who gave the merger notice or any connected person, and
  - (ii) is material to the notified arrangements;
 is not disclosed to the Secretary of State or the Director by such time before the end of that period as may be specified in regulations,
- (d) at any time after the merger notice is given but before the enterprises to which the notified arrangements relate cease to be distinct from each other, any of those enterprises ceases to be distinct from any enterprise other than an enterprise to which those arrangements relate,
- (e) the six months beginning with the end of the period for considering the merger notice expires without the enterprises to which the notified arrangements relate ceasing to be distinct from each other,
- (f) the merger notice is withdrawn, or
- (g) any information given in respect of the notified arrangements, whether in the merger notice or otherwise, by the person who gave the notice or any connected person is in any material respect false or misleading.

(2) Where—

- (a) two or more transactions which have occurred or, if any arrangements are carried into effect, will occur may be treated for the purposes of a merger reference as having occurred simultaneously on a particular date, and
- (b) subsection (3) of section 75A of this Act does not prevent such a reference with respect to the last of those transactions,

that subsection does not prevent such a reference with respect to any of those transactions which actually occurred less than six months before—

- (i) that date, or
- (ii) the actual occurrence of another of those transactions with respect to which such a reference may be made (whether or not by virtue of this subsection).

(3) In determining for the purposes of subsection (2) of this section the time at which any transaction actually occurred, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.]

### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

### Modifications etc. (not altering text)

**C50** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, ss. 66(3); S.I. 1994/571, art. 5

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## 75D Regulations

- [<sup>F24</sup>(1) The Secretary of State may make regulations for the purposes of sections 75A to 75C of this Act.
- (2) The regulations may, in particular—
- (a) provide for section 75B(2) or (3) or section 75C(1)(e) of this Act to apply as if any reference to a period of days or months were a reference to a period specified in the regulations for the purposes of the provision in question,
  - (b) provide for the manner in which any merger notice is authorised or required to be given, rejected or withdrawn, and the time at which any merger notice is to be treated as received or rejected,
  - (c) provide for the manner in which any information requested by the Director or any other material information is authorised or required to be provided or disclosed, and the time at which such information is to be treated as provided or disclosed,
  - (d) provide for the manner in which any notice under section 75B of this Act is authorised or required to be given,
  - (e) provide for the time at which any notice under section 75B(5)(a) of this Act is to be treated as received,
  - (f) provide for the address which is to be treated for the purposes of section 75B(6) of this Act and of the regulations as a person’s proper address,
  - (g) provide for the time at which any fee is to be treated as paid, and
  - (h) provide that a person is, or is not, to be treated, in such circumstances as may be specified in the regulations, as acting on behalf of a person authorised by regulations to give a merger notice or a person who has given such a notice.
- (3) The regulations may make different provision for different cases.
- (4) Regulations under this section shall be made by statutory instrument.]

### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#) (with [Sch. 24](#)); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with arts. 3(1), 4, 6, 8); [S.I. 2004/3233](#), art. 2, [Sch.](#) (with arts. 3-5)

### Modifications etc. (not altering text)

**C51** Ss. 64-77 modified (E.W.S.) (1.4.1994) by [1993 c. 43](#), s. [66\(3\)](#); [S.I. 1994/571](#), art. 5

## 75E Interpretation of sections 75A to 75D.

[<sup>F24</sup>In this section and sections 75A to 75D of this Act—

“connected person”, in relation to the person who gave a merger notice, means—

- (a) any person who, for the purposes of section 77 of this Act, is associated with him, or
- (b) any subsidiary of the person who gave the merger notice or of any person so associated with him,

“merger notice” is to be interpreted in accordance with section 75A(5) of this Act,

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“notified arrangements” means the arrangements mentioned in the merger notice or arrangements not differing from them in any material respect,  
 “prescribed” means prescribed by the Director by notice having effect for the time being and published in the London, Edinburgh and Belfast Gazettes,  
 “regulations” means regulations under section 75D of this Act, and  
 “regulations” means regulations under section 75D of this Act, and  
 “subsidiary” has the meaning given by section 75(4K) of this Act,  
 and references to the enterprises to which the notified arrangements relate are references to those enterprises that would have ceased to be distinct from one another if the arrangements mentioned in the merger notice in question had been carried into effect at the time when the notice was given.]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

**C52** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, ss. 66(3); S.I. 1994/571, art. 5

### 75F Power to amend sections 75B to 75D.

- [<sup>F24</sup>(1) The Secretary of State may, for the purpose of determining the effect of giving a merger notice and the steps which may be or are to be taken by any person in connection with such a notice, by regulations made by statutory instrument amend sections 75B to 75D of this Act.
- (2) The regulations may make different provision for different cases and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of each House of Parliament.]]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

**C53** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

[<sup>F46</sup> Undertakings as alternative to merger reference

#### Textual Amendments

**F46** Ss. 75G–75K inserted by Companies Act 1989 (c. 40, SIF 27), s. 147



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## 75G Acceptance of undertakings.

[<sup>F24</sup>(1) Where—

- (a) the Secretary of State has power to make a merger reference to the Commission under section 64 or 75 of this Act,
- (b) the Director has made a recommendation to the Secretary of State under section 76 of this Act that such a reference should be made, and
- (c) the Director has (in making that recommendation or subsequently) given advice to the Secretary of State specifying particular effects adverse to the public interest which in his opinion the creation of the merger situation qualifying for investigation may have or might be expected to have,

the Secretary of State may, instead of making a merger reference to the Commission, accept from such of the parties concerned as he considers appropriate undertakings <sup>F47</sup> . . . to take specified action which the Secretary of State considers appropriate to remedy or prevent the effects adverse to the public interest specified in the advice. the Secretary of State may, instead of making a merger reference to the Commission, accept from such of the parties concerned as he considers appropriate undertakings complying with subsections (2) and (3) of this section to take specified action which the Secretary of State considers appropriate to remedy or prevent the effects adverse to the public interest specified in the advice.

<sup>F48</sup>(2) . . . . .

<sup>F48</sup>(3) . . . . .

- (4) If the Secretary of State has accepted one or more undertakings under this section, no reference may be made to the Commission with respect to the creation or possible creation of the merger situation qualifying for investigation by reference to which the undertakings were accepted, except in a case falling within subsection (5) of this section.
- (5) Subsection (4) of this section does not prevent a reference being made to the Commission if material facts about the arrangements or transactions, or proposed arrangements or transactions, in consequence of which the enterprises concerned ceased or may cease to be distinct enterprises were not—
  - (a) notified to the Secretary of State or the Director, or
  - (b) made public,before the undertakings were accepted.
- (6) In subsection (5) of this section “made public” has the same meaning as in section 64 of this Act.]

### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F47** Words in s. 75G(1) repealed (3.1.1995) by 1994 c. 40, ss. 81, 82(2)(e), Sch. 17

**F48** S. 75G(2)(3) repealed (3.1.1995) by 1994 c. 40, ss. 9(1), 81, 82(2)(a)(e), Sch. 17

### Modifications etc. (not altering text)

**C54** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

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## 75H Publication of undertakings.

- [<sup>F24</sup>(1) The Secretary of State shall arrange for—
- (a) any undertaking accepted by him under section 75G of this Act,
  - (b) the advice given by the Director for the purposes of subsection (1)(c) of that section in any case where such an undertaking has been accepted, and
  - (c) any variation or release of such an undertaking, to be published in such manner as he may consider appropriate.
- (2) In giving advice for the purposes of section 75G(1)(c) of this Act the Director shall have regard to the need for excluding, so far as practicable, any matter to which subsection (4) of this section applies.
- (3) The Secretary of State shall exclude from any such advice as published under this section—
- (a) any matter to which subsection (4) of this section applies and in relation to which he is satisfied that its publication in the advice would not be in the public interest, and
  - (b) any other matter in relation to which he is satisfied that its publication in the advice would be against the public interest.
- (4) This subsection applies to—
- (a) any matter which relates to the private affairs of an individual, where publication of that matter would or might, in the opinion of the Director or the Secretary of State, as the case may be, seriously and prejudicially affect the interests of that individual, and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director or the Secretary of State, as the case may be, seriously and prejudicially affect the interests of that body, unless in his opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the advice.
- (5) For the purposes of the law relating to defamation, absolute privilege shall attach to any advice given by the Director for the purposes of section 75G(1)(c) of this Act.]

### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

### Modifications etc. (not altering text)

**C55** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 75J Review of undertakings.

[<sup>F24</sup>Where an undertaking has been accepted by the Secretary of State under section 75G of this Act, it shall be the duty of the Director—

- (a) to keep under review the carrying out of that undertaking, and from time to time consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either—

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- (i) one or more of the parties to it can be released from it, or
  - (ii) it needs to be varied or to be superseded by a new undertaking, and
- (b) if it appears to him that the undertaking has not been or is not being fulfilled, that any person can be so released or that the undertaking needs to be varied or superseded, to give such advice to the Secretary of State as he may think proper in the circumstances.]

#### Textual Amendments

**F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

**C56** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

### 75K Order of Secretary of State where undertaking not fulfilled.

- [<sup>F24</sup>(1) The provisions of this section shall have effect where it appears to the Secretary of State that an undertaking accepted by him under section 75G of this Act has not been, is not being or will not be fulfilled.
- (2) The Secretary of State may by order made by statutory instrument exercise such one or more of the as he may consider it requisite to exercise for the [<sup>F49</sup>relevant powers]purpose of remedying or preventing the adverse effects specified in the advice given by the Director for the purposes of section 75G(1)(c) of this Act; and those powers may be so exercised to such extent and in such manner as the Secretary of State considers requisite for the purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the Secretary of State shall take into account any advice given by the Director under section 75J(b) of this Act.
- (4) The provision contained in an order under this section may be different from that contained in the undertaking.
- (5) On the making of an order under this section, the undertaking and any other undertaking accepted under section 75G of this Act by reference to the same merger situation qualifying for investigation are released by virtue of this section.
- [<sup>F50</sup>(6) In subsection (2) of this section, “the relevant powers” means—
- (a) in relation to an undertaking to which subsection (7) of this section applies (“a divestment undertaking”), the powers specified in paragraphs 9A and 12 to 12C and Part II of Schedule 8 to this Act, and
  - (b) in relation to an undertaking which is not a divestment undertaking, the powers specified in that Schedule.
- (7) This subsection applies to an undertaking which provides for—
- (a) the division of a business by the sale of any part of the undertaking or assets or otherwise (for which purpose all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business),
  - (b) the division of a group of interconnected bodies corporate, or

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- (c) the separation, by the sale of any part of the undertaking or assets concerned or other means, of enterprises which are under common control otherwise than by reason of their being enterprises of interconnected bodies corporate.
- (8) Schedule 8 to this Act shall, to such extent as is necessary for the purpose of giving effect to subsection (2) of this section, have effect as if, in paragraph 1 of that Schedule, after “section 73” there were inserted “or section 75K”.]]]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F49** Words in s. 75K(2) substituted (3.1.1995) by 1994 c. 40, ss. 9(2), 82(2)(a)
- F50** S. 75K(6)(7)(8) inserted (3.1.1995) by 1994 c. 40, ss. 9(3), 82(2)(a)

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

- C57** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

### Supplementary

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

[<sup>F24</sup>It shall be the duty of the Director—

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

[<sup>F51</sup>(2) In exercising his duty under this section the Director shall take into consideration any representations made to him by persons appearing to him to have a substantial interest in any such arrangements or transactions or by bodies appearing to him to represent substantial numbers of persons who have such an interest.]]

#### Textual Amendments

- F24** Ss. 63-76 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F51** S. 76(2) added by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 11

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

- C58** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

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**F5277 Associated persons.**

.....

**Textual Amendments**

**F52** S. 77 repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), **Sch. para. 1(3)** (with art. 3)

**PART VI**

REFERENCES TO COMMISSION OTHER THAN MONOPOLY AND MERGER REFERENCES

**78 General references.**

[<sup>F53</sup>(1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time require the Commission to submit to him or them a report on the general effect on the public interest—

- (a) of practices of a specified class which, in his or their opinion, are commonly adopted as a result of, or for the purpose of preserving, monopoly situations, or
- (b) of any specified practices which appear to him or them to be uncompetitive practices.

(2) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may also at any time require the Commission to submit to him or them a report on the desirability of action of any specified description for the purpose of remedying or preventing effects, adverse to the public interest, which result or might result from monopoly situations or from any such practices as are mentioned in the preceding subsection.

[<sup>F54</sup>(3) .....]

**Textual Amendments**

**F53** Ss. 78-80 repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), ss. 208, 279, **Sch. 26** (with Sch. 24); [S.I. 2003/1397](#), art. 2(1), Sch. (with arts. 3(1), 6, 8)

**F54** S. 78(3) repealed (1.3.2000) by [1998 c. 41](#), s. 74(1)(3), Sch. 12 para. 1(3)(c), **Sch. 14 Pt. I** (with s. 73); [S.I. 2000/344](#), art. 2, **Sch**

**79 References as to restrictive labour practices.**

[<sup>F53</sup>(1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time refer to the Commission the questions—

- (a) whether a practice of a description specified in the reference exists and, if so, whether it is a restrictive labour practice, and
- (b) if it exists and is a restrictive labour practice, whether it operates or may be expected to operate against the public interest and, if so, what particular effects, adverse to the public interest, it has or may be expected to have.

(2) A reference under this section may refer those questions to the Commission either—

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- (a) in relation to commercial activities in the United Kingdom generally, or
  - (b) in relation to such commercial activities in the United Kingdom as consist of the supply of goods of a description specified in the reference, or of the supply of services of a description so specified, or of the export from the United Kingdom of goods of a description so specified.
- (3) The Commission shall examine any questions referred to them under this section and shall report to the Minister or Ministers who referred them to the Commission.
- (4) For the purposes of their functions under subsection (3) of this section the Commission shall disregard anything which appears to them to have been done, or omitted to be done, in contemplation or furtherance of an industrial dispute within the meaning of the <sup>M2</sup>Industrial Relations Act 1971.
- (5) In this section “restrictive labour practice” means any practice whereby restrictions or other requirements, not being restrictions or requirements relating exclusively to rates of remuneration, operate in relation to the employment of workers in any commercial activities in the United Kingdom or in relation to work done by any such workers, and are restrictions or requirements which—
- (a) could be discontinued without thereby contravening the provisions of an enactment or of any instrument having effect by virtue of an enactment, and
  - (b) are not necessary for, or are more stringent than is necessary for, the efficient conduct of those activities.]

#### Textual Amendments

**F53** Ss. 78-80 repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), ss. 208, 279, [Sch. 26](#) (with [Sch. 24](#)); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8)

#### Marginal Citations

**M2** 1971 c. 72.

## 80 Variation of reference under Part VI.

[<sup>F53</sup>A reference made under this Part of this Act may at any time be varied by the Minister or Ministers by whom the reference was made.]

#### Textual Amendments

**F53** Ss. 78-80 repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), ss. 208, 279, [Sch. 26](#) (with [Sch. 24](#)); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8)

## PART VII

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

## 81 Procedure in carrying out investigations

[<sup>F55</sup>(1) The Advisory Committee, in carrying out an investigation on a reference to which section 17 of this Act applies, <sup>F56</sup> . . .,—

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- (a) shall take into consideration any representations made to them by persons appearing to them to have a substantial interest in the subject-matter of the reference, or by bodies appearing to them to represent substantial numbers of persons who have such an interest, and
- (b) unless in all the circumstances they consider it not reasonably necessary or not reasonably practicable to do so, shall permit any such person or body to be heard orally by the Advisory Committee<sup>F56</sup> . . . , or by a member of the Committee<sup>F56</sup> . . . nominated by them for that purpose.
- (2) Subject to subsection (1) of this section, the Advisory Committee<sup>F57</sup> . . . may determine their own procedure for carrying out any investigation on a reference under this Act, and in particular may determine—
- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise take part in the investigation, and
- (b) the extent, if any, to which the sittings of the Advisory Committee<sup>F57</sup> . . . are to be held in public.
- (3) In determining their procedure under subsection (2) of this section,<sup>F58</sup> . . . , the Advisory Committee<sup>F58</sup> . . . shall act in accordance with any general directions which may from time to time be given to them by the Secretary of State.
- (4) The Secretary of State shall lay before each House of Parliament a copy of any directions given by him under subsection (3) of this section.]

**Textual Amendments**

- F55** S. 81 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 26](#) (with [Sch. 24](#)); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 3(1), 6, 8); S.I. 2004/3233, art. 2, [Sch.](#) (with arts. 3-5)
- F56** Words in s. 81(1) repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), [Sch. 12 para. 1\(9\)\(a\)\(i\)\(ii\)](#), [Sch. 14 Pt. I](#) (with s. 73); S.I. 1999/505, art. 2, [Sch. 2](#)
- F57** Words in s. 81(2) repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), [Sch. 12 para. 1\(9\)\(b\)](#), [Sch. 14 Pt. I](#) (with s. 73); S.I. 1999/505, [art. 2 Sch. 2](#)
- F58** Words in s. 81(3) repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), [Sch. 12 para. 1\(9\)\(c\)](#), [Sch. 14 Pt. I](#) (with s. 73); S.I. 1999/505, art. 2, [Sch. 2](#)

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

- C59** S. 81 applied with modifications (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [ss. 14\(7\), 223\(2\)](#) (with [ss. 82\(3\), 186\(1\), 188, 222\(1\)](#), [Sch. 14 para. 6](#)).
- S. 81 extended with modifications (1.4.1992) by S.I. 1992/231 (N.I. 1), [art. 15\(8\)](#); S.R. 1992/117, [art. 3\(1\)](#)
- S. 81 modified by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 39, [Sch. 4 para. 4\(7\)\(a\)](#)
- S. 81 applied with modifications (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#) s. 12(8)
- S. 81 applied with modifications (E.W.) by [Water Act 1989 \(c. 15, SIF 44:2\)](#) ss. 24(7), 48(3)(4)
- S. 81 applied with modifications (E.W.S.) by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), [ss. 24\(7\), 48\(3\)\(4\)](#)
- S. 81 applied with modifications (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\)](#), [s. 44\(3\)](#)
- S. 81 applied (with modifications) (E.W.S.) (1.4.1994) by 1993 c. 43, [s. 13\(8\)\(9\)](#); S.I. 1994/571, [art. 5](#).
- S. 81 applied (with modifications) (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), [art. 15\(9\)](#); S.R. 1996/216, [art. 2](#)
- S. 81 applied (with modifications) (1.9.1995) by S.I. 1994/426 (N.I. 1), [art. 35\(3\)](#); S.R. 1995/294, [art. 2](#)

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S. 81 applied (with modifications) (28.8.1996) by [S.I. 1996/2199](#), [art. 16](#)

<sup>F59</sup>**82 General provisions as to reports.**

.....

**Textual Amendments**

**F59** S. 82 repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), [Sch. para. 1\(4\)](#) (with art. 3)

<sup>F60</sup>**83 Laying before Parliament and publication of reports.**

.....

**Textual Amendments**

**F60** S. 83 repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), [Sch. para. 1\(5\)](#) (with art. 3)

## PART VIII

### ADDITIONAL PROVISIONS RELATING TO REFERENCES TO COMMISSION

**84 Public interest.**

[<sup>F61</sup>(1) In determining for any purposes to which this section applies whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability—

- (a) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom;
- (b) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied;
- (c) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets;
- (d) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and
- (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom.

(2) This section applies to the purposes of any functions of the Commission under this Act other than functions to which section 59(3) of this Act applies.]



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#### Textual Amendments

- F61** S. 84 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26** (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

- C60** S. 84 extended (4.4.1980) by Competition Act 1980 (c. 21), s. 11(9) and extended *ibid.*, ss. 7(6), 33(5)  
S. 84 applied (with modifications) (1.4.1999) by 1980 c. 21, s. 11(9A) (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 4(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

### <sup>F62</sup>85 Attendance of witnesses and production of documents.

#### Textual Amendments

- F62** S. 85 repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 1(1), **Sch. para. 1(6)** (with art. 3)

### 86 Director to receive copies of reports.

[<sup>F63</sup>(1) Subject to the next following subsection, a copy of every report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, shall be transmitted by the Commission to the Director; and the Minister or Ministers to whom any such report is made shall take account of any advice given to him or them by the Director with respect to a report of which a copy is transmitted to the Director under this section.

(2) The preceding subsection shall not apply to a report made on a monopoly reference, where the reference was made by a Minister or Ministers and (by virtue of any of the provisions of section 50 of this Act) could not have been made by the Director.

(3) In this section “Minister” includes [<sup>F64</sup>the Department of Agriculture for Northern Ireland and the Department of Commerce for Northern Ireland].]

#### Textual Amendments

- F63** S. 86 repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26** (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

- F64** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), **Sch. 1 para. 2(1)(b)(4)**

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

- C61** S. 86 amended (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 31(4)(b), 35(4), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).  
S. 86 amended (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43; S.I. 1996/218, art. 2**)  
S. 86: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(b) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2

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- S. 86: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)(b)**; S.R. 1992/117, **art.3(1)**
- S. 86 modified (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)**; S.R. 1992/117, **art.3(1)**
- S. 86 modified by Telecommunications Act 1984 (c. 12, SIF 96), **s. 50(2)**
- S. 86 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 28(2)**
- S. 86 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1) s. 43(2)
- S. 86 modified (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(6)(a)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86 amended (1.2.2001) by 2000 c. 38, **s. 86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 86 amended (1.2.2001) by 2000 c. 38, **s. 86(4)(a)(5)** (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 86 amended (1.2.2001) by 2000 c. 38, **s. 86(7)(a)** (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 86: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(6)(b)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86 amended (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(b)(4)**; S.I. 1994/571, **art. 5**
- S. 86: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A** (as inserted by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)
- S. 86 amended (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(4)**; S.I. 1994/571, **art. 5**

## <sup>F65</sup>87 **Supplementary provisions as to laying reports before Parliament.**

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### **Textual Amendments**

- F65** S. 87 repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 1(1), **Sch. para. 1(7)** (with art. 3)

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

[<sup>F66</sup>(1) Where a report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, as laid before Parliament,—

- (a) in the case of a monopoly reference, sets out such conclusions as are mentioned in section 56(1) of this Act, or
- (b) in the case of a merger reference, sets out such conclusions as are mentioned in section 73(1) or in section 75(4)(e) of this Act,

and a copy of the report is transmitted to the Director under section 86 of this Act, it shall be the duty of the Director, [<sup>F67</sup>to comply with any request of the appropriate Minister or Ministers to consult with any persons mentioned in the request (referred to below in this section as “the relevant parties”)] with a view to obtaining from them undertakings to take action indicated in the request made to the Director as being action requisite, in the opinion of the appropriate Minister or Ministers, for the purpose of remedying or preventing the adverse effects specified in the report.

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- (2) The Director shall report to the appropriate Minister or Ministers the outcome of his consultations under the preceding subsection; and if any undertaking is given by any of the relevant parties to take action indicated in the request made to the Director as mentioned in that subsection (in this section referred to as an “appropriate undertaking”) the Minister to whom the undertaking is given shall furnish particulars of it to the Director.

[<sup>F68</sup>(2A) Where—

(a) an undertaking is given under this section after the commencement of this subsection, or

(b) an undertaking given under this section is varied or released after that time, the Minister to whom the undertaking is or was given shall cause the undertaking or, as the case may be, the variation or release to be published in such manner as the Minister may consider appropriate.]

- (3) Where in his consultations under subsection (1) of this section the Director seeks to obtain an appropriate undertaking from any of the relevant parties, and either—

(a) he is satisfied that no such undertaking is likely to be given by that party within a reasonable time, or

(b) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that no such undertaking has been given by that party,

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

- (4) Where the Director has made a report under subsection (2) of this section, and particulars of an undertaking given by any of the relevant parties have been furnished to the Director in accordance with that subsection, it shall be the duty of the Director—

(a) to keep under review the carrying out of that undertaking, and from time to time to consider whether, by reason of any change of circumstances, [<sup>F69</sup>the undertaking is no longer appropriate and either the relevant parties (or any of them) can be released from the undertaking or the undertaking] needs to be varied or to be superseded by a new undertaking, and

(b) if it appears to him [<sup>F70</sup>that any person can be so released or that an undertaking] has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.

- (5) Where, in consequence of a report of which a copy is transmitted to the Director under section 86 of this Act, an order is made under section 56 or section 73 of this Act in relation to any of the matters to which the report relates, it shall be the duty of the Director to keep under review the action (if any) taken in compliance with that order, and from time to time to consider whether, by reason of any change of circumstances, the order should be varied [<sup>F71</sup>or revoked] or should be superseded by a new order, and—

(a) if it appears to him that the order has in any respect not been complied with, to consider whether any action (by way of proceedings in accordance with section 93 of this Act or otherwise) should be taken for the purpose of securing compliance with the order, and (where in his opinion it is appropriate to do

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- so) to take such action himself or give advice to any Minister or other person by whom such action might be taken, or
- (b) if it appears to him that the order needs to be varied [<sup>F71</sup>or revoked] or to be superseded by a new order, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (6) In this section . . . <sup>F72</sup>, in relation to a report of the Commission, “the appropriate Minister or Ministers” means the Minister or Ministers to whom the report is made, “undertaking” means an undertaking given to that Minister or to one of those Ministers, as the case may be, and, in subsections (3) and (5) of this section, the references to section 73 of this Act shall be construed as including references to that section as applied by section 75(4) of this Act.]

### Textual Amendments

- F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F67** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 14(1)(5)
- F68** S. 88 (2A) inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 14(2).
- F69** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 14(3)(a)
- F70** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 14(3)(b)
- F71** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 14(3)
- F72** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, Sch. 20 para. 14(4)(5), Sch. 24

### Modifications etc. (not altering text)

- C62** S. 88 amended (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 31(4)(b), 35(4), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- S. 88 amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 88 amended (1.2.2001) by 2000 c. 38, s. 86(4)(a)(5) (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 88 amended (1.2.2001) by 2000 c. 38, s. 86(7)(a) (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 88(4) amended by Price Commission Act 1977 (c. 33), s. 19(3)
- S. 88(5) amended by Price Commission Act 1977 (c. 33), s. 19(4)
- S. 88 modified by Telecommunications Act 1984 (c. 12, SIF 96), s. 50(2)
- S. 88 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 28(2)
- S. 88 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 43(2)
- S. 88: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 46(2)(b); S.R. 117, art.3(1)
- S. 88 modified (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 46(2); S.R. 1992/117, art.3(1)
- S. 88: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, s. 67(2)(b)(4); S.I. 1994/571, art. 5
- S. 88: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)
- S. 88 amended (E.W.S.) (1.4.1994) by 1993 c. 43, s. 67(2)(4); S.I. 1994/571, art. 5.
- S. 88: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(b) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2
- S. 88 modified (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(6)(a) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2
- S. 88 amended (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2

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S. 88 amended (E.W.S.) (1.3.1996) by 1986 c. 44, **s.36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)  
**C63** S. 88(2)-(5) applied (with modifications) (28.8.1996) by S.I. 1996/2199, **reg. 22(2)**

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

- [<sup>F66</sup>(1) The provisions of this section shall have effect where—
- [<sup>F73</sup>(a) in the circumstances specified in subsection (1) of any of the following sections—
- (i) sections 56, 73 and 75K of this Act, <sup>F74</sup> . . .
- the Secretary of State makes, has made, or has under consideration the making of, an order under the section in question exercising any of the powers specified in Schedule 8 to this Act, or
- (b) in the circumstances specified in subsection (1) of section 12 of the Competition Act 1980 the Secretary of State makes, has made, or has under consideration the making of, an order under subsection (5) of that section exercising any of those powers.] and in those provisions “the principal order” means the order which the Secretary of State makes, or has it under consideration to make, as mentioned in paragraph (a) or paragraph (b) of this subsection.
- (2) With a view to achieving the purpose for which any of the powers specified in . . . <sup>F75</sup> that Schedule are, or are proposed to be, exercised by the principal order, the Secretary of State may by order made by statutory instrument exercise any of the powers mentioned in the next following subsection.
- (3) An order under this section may—
- (a) prohibit or restrict the doing of things which, in the opinion of the Secretary of State, might impede the operation of the principal order or, where it has not yet been made, might be an impediment to making it;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- [<sup>F76</sup>(bb) require any person to furnish any such information to the Director as may be specified or described in the order;]
- (c) provide for the carrying on of any activities or the safe-guarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order under this section) or in any other manner.]

### Textual Amendments

- F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26** (with **Sch. 24**); S.I. 2003/1397, **art. 2(1)**, **Sch.** (with **arts. 3(1)**, **4**, **6**, **8**); S.I. 2004/3233, **art. 2**, **Sch.** (with **arts. 3-5**)
- F73** S. 89(1) paras. (a) and (b) substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, **Sch. 20 para. 15(1)(4)**
- F74** Words in s. 89(1)(a) repealed (1.3.2000) by S.I. 2000/311, **art. 9(3)**
- F75** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, **Sch. 20 para. 15(2)(4)**, **Sch. 24**
- F76** S. 89(3)(bb) inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, **Sch. 20 para. 15(3)(4)**

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

- [<sup>F66</sup>(1) This section applies to any order under section 56, section 73, section 74 [<sup>F77</sup>section 75K]or section 89 of this Act.
- (2) Any such order declaring anything to be unlawful may declare it to be unlawful either for all persons or for such persons as may be specified or described in the order.
- (3) Nothing in any such order shall have effect so as to apply to any person in relation to his conduct outside the United Kingdom unless that person is—
- (a) a citizen of the United Kingdom and Colonies, or
  - (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or
  - (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons,
- but, in the case of a person falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, any such order may extend to acts or omissions outside the United Kingdom.
- (4) An order to which this section applies may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.
- [<sup>F78</sup>(5) Nothing in any order to which this section applies shall have effect so as to—
- (a) cancel or modify conditions in licences granted—
    - (i) under a patent granted under the Patents Act 1949 or the Patents Act 1977 or a European patent (UK) (within the meaning of the Patents Act 1977), or
    - (ii) in respect of a design registered under the Registered Designs Act 1949,
 by the proprietor of the patent or design, or
  - (b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.]
- (6) Nothing in any such order shall affect the conduct of a board established under a scheme made under the <sup>M3</sup>Agricultural Marketing Act 1958 [<sup>F79</sup>or under the <sup>M4</sup>Agricultural Marketing Act (Northern Ireland) 1964][<sup>F80</sup>or the Agricultural Marketing (Northern Ireland) Order 1982.]
- (7) An order to which this section applies may authorise the Minister making the order to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association,—
- (a) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order, or
  - (b) to do or refrain from doing anything so specified or described which he might be required by the order to do or refrain from doing,
- and may authorise that Minister to vary or revoke any directions so given.]

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#### Textual Amendments

- F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26** (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F77** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, **Sch. 20 para. 16(2)**
- F78** S. 90(5) substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, **Sch. 20 para. 16(3)**
- F79** Words repealed (*prosp.*) (but by S.R.s 1984 No. 422 and 1989 No. 47 the repeal came into operation in relation to the Pigs Marketing Board (Northern Ireland) on 31.12.1984 and in relation to the Milk Marketing Board for Northern Ireland on 1.4.1989 respectively) by S.I. 1982/1080 (N.I. 12), art. 46(2), **Sch. 9**
- F80** Words added by S.I. 1982/1080, (N.I. 12), art. 46(1), Sch. 8

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

- C64** S. 90 applied (with modifications) (28.8.1996) by S.I. 1996/2199, **reg. 24**
- C65** S. 90(1) extended (1.5.1980) by Competition Act 1980 (c. 21), **s. 12(6)**
- C66** S. 90(1)(3) extended by Competition Act 1980 (c. 21), **ss. 10(4), 33(5)**
- C67** S. 90(4) extended (9.5.1998) by 1993 c. 21, **s. 33(5)**; S.I. 1998/1138, **art. 2(e)(vii)**  
S. 90(4) extended (13.5.1999) by 1994 c. 17, **s. 33(5)**; S.I. 1999/1309, art. 2, **Sch.**

#### Marginal Citations

- M3** 1958 c. 47.
- M4** 1964 c. 13 (N.I.)

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

[<sup>F66</sup>(1) No order to which section 90 of this Act applies and which exercises any of the powers specified in Part II of Schedule 8 to this Act, and no order varying or revoking any such order, shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament; and the provisions of Schedule 9 to this Act shall have effect with respect to the procedure to be followed before laying before Parliament a draft of any such order.

- (2) Before making any order under section 56 or section 73 of this Act other than any such order as is mentioned in the preceding subsection, the Minister proposing to make the order shall publish, in such manner as appears to him to be appropriate, a notice—
- stating his intention to make the order;
  - indicating the nature of the provisions to be embodied in the order; and
  - stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before a date specified in the notice (that date being not earlier than the end of the period of thirty days beginning with the day on which publication of the notice is completed);

and the Minister shall not make the order before the date specified in the notice in accordance with paragraph (c) of this subsection and shall consider any representations duly made to him in accordance with the notice before that date.]

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#### Textual Amendments

**F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

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

**C68** S. 91(2) extended (1.5.1980) by Competition Act 1980 (c. 21), s. 12(6) and extended *ibid.*, ss. 10(4), 33(5)  
 S. 91(2) applied (28.8.1996) by S.I. 1996/2199, reg. 23(3)

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

[<sup>F66</sup>(1) For the purpose of determining whether to make an order to which section 90 of this Act applies whereby any powers are to be exercised in relation to a company or association, or for the purpose of obtaining information on which to exercise by or under any such order any powers in relation to a company or association, the Secretary of State may appoint an inspector to investigate and report to him on any such matters falling within the next following subsection as are specified or described in the appointment.

[<sup>F81</sup>(2) The matters which may be so specified or described are any matters which in the case of a company registered under the Companies Act 1985 (or the previous corresponding legislation)—

- (a) could in accordance with sections 432 and 433 of that Act be investigated by an inspector appointed under section 432, or
- (b) could in accordance with section 442 of that Act, or in accordance with any provisions as applied by section 443(1), be investigated by an inspector appointed under section 442.

(3) For purposes connected with any investigation made by an inspector appointed under this section—

- (a) sections 434 to 436 of the Companies Act 1985 (or those sections as applied by section 443(1) ) shall have effect as they do for the purposes of any investigation under section 432 or 442 of that Act, and
- (b) the provisions of that Act referred to in this and the last preceding subsection shall be taken to extend throughout the United Kingdom.]]

#### Textual Amendments

**F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F81** S. 92(2)(3) substituted by Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), s. 30, Sch. 2

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

**C69** S. 92 applied (with modifications) (28.8.1996) by S.I. 1996/2199, reg. 24



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

- [<sup>F66</sup>(1) No criminal proceedings shall, by virtue of the making of an order to which section 90 of this Act applies, lie against any person on the grounds that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.
- (2) Nothing in the preceding subsection shall limit any right of any person to bring civil proceedings in respect of any contravention or apprehended contravention of any such order, and (without prejudice to the generality of the preceding words) compliance with any such order shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (3) If any person makes default in complying with any directions given under section 90(7) of this Act, the court may, on the application of the Secretary of State, make an order requiring him to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.
- (4) Any order of the court under subsection (3) of this section may provide that all the costs or expenses of or incidental to the application for the order shall be borne by any person in default or by any officers of a company or association who are responsible for its default.
- (5) In this section “the court” —
- (a) in relation to England and Wales, means the High Court;
  - (b) in relation to Scotland, means the Court of Session; and
  - (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.]

#### Textual Amendments

**F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 26](#) (with [Sch. 24](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [arts. 3\(1\), 4, 6, 8](#)); [S.I. 2004/3233, art. 2, Sch.](#) (with [arts. 3-5](#))

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

- C70** S. 93 extended (1.5.1980) by [Competition Act 1980 \(c. 21\), s. 12\(6\)](#) and extended *ibid.*, ss. 10(4), 33(5)
- C71** S. 93 applied (with modifications) (28.8.1996) by [S.I. 1996/2199, reg. 24](#)
- C72** S. 93(3)(4) applied by [Channel Tunnel Act 1987 \(c. 53, SIF 102\), s. 33\(7\)](#)
- C73** S. 93(3)(4) extended (18.12.1996) by [1996 c. 61, s. 26\(3\)](#)

### [<sup>F82</sup>93A Enforcement of undertakings.

- [<sup>F66</sup>(1) This section applies where a person (in this section referred to as “the responsible person”) has given an undertaking which—
- (a) has been accepted by the Secretary of State [<sup>F83</sup>pursuant to a proposal under section 56A of this Act or under section 56F or] 75G of this Act,
  - (b) has been accepted by the appropriate Minister or Ministers under section 88 of this Act after the commencement of this section <sup>F84</sup> . . .

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<sup>F84</sup>(c) .....

- (2) Any person may bring civil proceedings in respect of any failure, or apprehended failure, of the responsible person to fulfil the undertaking, as if the obligations imposed by the undertaking on the responsible person had been imposed by an order to which section 90 of this Act applies.]]

**Textual Amendments**

**F66** Ss. 88-93A repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 4, 6, 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F82** S. 93A inserted by Companies Act 1989 (c. 40, SIF 27), s. 148

**F83** Words in s. 93A(1)(a) substituted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), Sch. 11 para. 2(3)

**F84** S. 93A(1)(c) and word “, or” immediately preceding it repealed (1.3.2000) by S.I. 2000/311, art. 9(4)

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

**C74** S. 93A applied (with modifications) (28.8.1996) by S.I. 1996/2199, reg. 24

<sup>F85</sup>**93B False or misleading information.**

- (1) If a person furnishes any information—
  - <sup>F86</sup>(a) .....
  - (b) to the Commission in connection with the functions of the Commission under <sup>F87</sup>... the Airports Act 1986,  
and either he knows the information to be false or misleading in a material particular, or he furnishes the information recklessly and it is false or misleading in a material particular, he is guilty of an offence.

- (2) A person who—
  - (a) furnishes any information to another which he knows to be false or misleading in a material particular, or
  - (b) recklessly furnishes any information to another which is false or misleading in a material particular,
 knowing that the information is to be used for the purpose of furnishing information as mentioned in subsection (1)(a) or (b) of this section, is guilty of an offence.

- (3) A person guilty of an offence under subsection (1) or (2) of this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) Section 129(1) of this Act does not apply to an offence under this section.”]

<sup>F88</sup>(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 <sup>F89</sup>... section 44B of the Airports Act 1986.]

**Textual Amendments**

**F85** S. 93B inserted by Companies Act 1989 (c. 40, SIF 27), s. 151

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- F86** S. 93B(1)(a) repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 1(1), **Sch. para. 1(8)** (with art. 3)
- F87** Words in s. 93B(1)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F88** S. 93B(5) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 5(4)(b)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)
- F89** Words in s. 93B(5) repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

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

- C75** S. 93B extended by S.I. 1990/1715, **reg. 4**  
S. 93B extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2)(a)(b), **Sch. 2 para. 14**
- C76** S. 93B applied by Broadcasting Act 1990 (c. 42, SIF 96), s. 39, **Sch. 4 para. 8(4)**  
S. 93B applied (28.8.1996) by S.I. 1996/2199, **reg. 25**
- C77** S. 93B modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 67(9); S.I. 1994/571, **art. 5**  
S. 93B applied (with modifications) (1.2.2001) by 2000 c. 38, s. 12(9)(10)(a) (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)  
S. 93B applied (with modifications) (1.2.2001) by 2000 c. 38, s. 18(1)(2)(c) (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)  
S. 93B applied (with modifications) (26.3.2001) by 2000 c. 26, s. 20(1)(2)(a); S.I. 2000/2957, art. 2(3), **Sch. 3**  
S. 93B applied (with modifications) (26.3.2001) by 2000 c. 38, s. 20(4)(5)(a); S.I. 2000/2957, art. 2(3), **Sch. 3**  
S. 93B applied (with modifications) (1.10.2001) by 1989 c. 29, s. 56C(7)(8) (as inserted (1.10.2001) by 2000 c. 27, ss. 43, 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)  
S. 93B applied (with modifications) (1.10.2001) by 1986 c. 44, s. 42E(7)(8) (as inserted (1.10.2001) by 2000 c. 27, ss. 88, 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)  
S. 93B applied (with modifications) (*prosp.*) by 1993 c. 43, **Sch. 4A para. 10(2)(a)** (as inserted (*prosp.*) by 2000 c. 38, ss. 231, 275(1), **Sch. 24**)  
S. 93B modified (1.3.1996) by 1986 c. 44, s. 36A(8) (as inserted (1.3.1996) by 1995 c. 45, s. 1(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)  
S. 93B modified (1.4.1999) by 1984 c. 12, s. 50(6A) (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. IV para. 9(5)**; S.I. 1999/505, art. 2, **Sch.**)  
S. 93B modified (1.4.1999) by 1989 c. 29, s. 43(6A) (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. IV para. 12(6)**; S.I. 1999/505, art. 2, **Sch.**)  
S. 93B modified (1.4.1999) by 1991 c. 56, s. 31(8A) (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. IV para. 13(8)**; S.I. 1999/505, art. 2, **Sch.**)  
S. 93B modified (N.I.) (1.4.1999) by S.I. 1992/231 (N.I. 1), **art. 46(6A)** (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. V para. 17(6)**; S.I. 1999/505, art. 2, **Sch.**)  
S. 93B modified (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(7)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**

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**PART IX**

AMENDMENTS OF RESTRICTIVE TRADE PRACTICES ACTS

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

(1) Subject to the transitional provisions having effect by virtue of section 139 of this Act, the functions of the Registrar of Restrictive Trading Agreements are hereby transferred to the Director,<sup>F90</sup> ...

<sup>F91</sup>(2) .....

**Textual Amendments**

**F90** Words in s. 94(1) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 16](#) Group 2

**F91** S. 94(2) repealed by [Resale Prices Act 1976 \(c. 53\)](#), [Sch. 3 Pt. 1](#)

**95—** .....<sup>F92</sup>  
**106.**

**Textual Amendments**

**F92** [Ss. 95–117](#) repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 6](#)

**PART X**

**107—** .....<sup>F93</sup>  
**117.**

**Textual Amendments**

**F93** [Ss. 95–117](#) repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 6](#)

**PART XI**

PYRAMID SELLING AND SIMILAR TRADING SCHEMES

[<sup>F94</sup>**118 Trading schemes to which Part XI applies.**

- (1) This Part of this Act applies to any trading scheme if—
  - (a) the prospect is held out to participants of receiving payments or other benefits in respect of any of the matters specified in subsection (2) of this section; and
  - (b) (subject to subsection (7) of this section) either or both of the conditions in subsections (3) and (4) of this section are fulfilled in relation to the scheme.
- (2) The matters referred to in paragraph (a) of subsection (1) of this section are—

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- (a) the introduction by any person of other persons who become participants in a trading scheme;
  - (b) the continued participation of participants in a trading scheme;
  - (c) the promotion, transfer or other change of status of participants within a trading scheme;
  - (d) the supply of goods or services by any person to or for other persons;
  - (e) the acquisition of goods or services by any person.
- (3) The condition in this subsection is that—
- (a) goods or services, or both, are to be provided by the person promoting the scheme (in this Part of this Act referred to as “the promoter”) or, in the case of a scheme promoted by two or more persons acting in concert (in this Part of this Act referred to as “the promoters”), by one or more of those persons; and
  - (b) the goods or services so provided—
    - (i) are to be supplied to or for other persons under transactions effected by participants (whether in the capacity of agents of the promoter or of one of the promoters or in any other capacity), or
    - (ii) are to be used for the purposes of the supply of goods or services to or for other persons under such transactions.
- (4) The condition in this subsection is that goods or services, or both, are to be supplied by the promoter or any of the promoters to or for persons introduced to him or any of the other promoters (or an employee or agent of his or theirs) by participants.
- (5) For the purposes of this Part of this Act a prospect of a kind mentioned in paragraph (a) of subsection (1) of this section shall be treated as being held out to a participant whether it is held out so as to confer on him a legally enforceable right or not.
- (6) This Part of this Act does not apply to any trading scheme—
- <sup>F95</sup>(a) [ under which the promoter or any of the promoters or participants is to carry on, or to purport to carry on, a relevant regulated activity;]
  - (b) which otherwise falls within a description prescribed by regulations made by the Secretary of State by statutory instrument.
- <sup>F96</sup>(6A) [ For the purposes of subsection (6)(a), “relevant regulated activity” means—
- (a) dealing in investments as principal or agent;
  - (b) arranging deals in investments;
  - (c) managing investments;
  - (d) safeguarding and administering investments;
  - (e) sending dematerialised instructions;
  - (f) establishing etc. a collective investment scheme;
  - (g) advising on investments,
- and paragraphs (a) to (g) must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section, and Schedule 2 to that Act.]
- (7) The Secretary of State may by order made by statutory instrument—
- (a) disapply paragraph (b) of subsection (1) of this section in relation to a trading scheme of a kind specified in the order; or
  - (b) amend or repeal paragraph (a) of subsection (6) of this section;

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and no such order, and no order varying or revoking any such order, shall be made under this subsection unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(8) In this Part of this Act—

“goods” includes property of any description and a right to, or interest in, property;

“participant” means, in relation to a trading scheme, a person (other than the promoter or any of the promoters) participating in the scheme;

“trading scheme” includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not;

and any reference to the provision or supply of goods shall be construed as including a reference to the grant or transfer of a right or interest.

(9) In this section any reference to the provision or supply of goods or services by a person shall be construed as including a reference to the provision or supply of goods or services under arrangements to which that person is a party.]

#### Textual Amendments

**F94** S. 118 substituted (6.2.1997) by 1996 c. 32, s. 1; S.I. 1997/29, art. 2

**F95** S. 118(6)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 284(2)

**F96** S. 118(6A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 284(3)

### 119 Regulations relating to such trading schemes.

(1) Regulations made by the Secretary of State by statutory instrument may make provision with respect to the issue, circulation or distribution of [F97 any form of advertisement, prospectus, circular or notice which contains any information] calculated to lead directly or indirectly to persons becoming participants in such a trading scheme, and may prohibit any such [F97 advertisement, prospectus, circular or notice] from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not included in it as may be prescribed by the regulations.

(2) Regulations made by the Secretary of State by statutory instrument may prohibit the promoter or any of the promoters of, or any participant in, a trading scheme to which this Part of this Act applies from—

- (a) supplying any goods to a participant in the trading scheme, or
- (b) supplying any training facilities or other services for such a participant, or
- (c) providing any goods or services under a transaction effected by such a participant, or
- (d) being a party to any arrangements under which goods or services are supplied or provided as mentioned in any of the preceding paragraphs, or
- (e) accepting from any such participant any payment, or any undertaking to make a payment, in respect of any goods or services supplied or provided as mentioned in any of paragraphs (a) to (d) of this subsection or in respect of any goods or services to be so supplied or provided,

unless (in any such case) such requirements as are prescribed by the regulations are complied with.

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- (3) Any requirements prescribed by regulations under subsection (2) of this section shall be such as the Secretary of State considers necessary or expedient for the purpose of preventing participants in trading schemes to which this Part of this Act applies from being unfairly treated; and, without prejudice to the generality of this subsection, any such requirements may include provisions—
- (a) requiring the rights and obligations of every participant under such a trading scheme to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters;
  - (b) specifying rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under any such trading scheme; or
  - (c) imposing restrictions on the liabilities to be incurred by such a participant in respect of any of the matters mentioned in paragraphs (a) to (e) of subsection (2) of this section.
- (4) Regulations made under subsection (2) of this section—
- (a) may include provision for enabling a person who has made a payment as a participant in a trading scheme to which this Part of this Act applies, in circumstances where any of the requirements prescribed by the regulations were not complied with, to recover the whole or part of that payment from any person to whom or for whose benefit it was paid, and
  - (b) subject to any provision made in accordance with the preceding paragraph, may prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings.
- (5) The power to make regulations under this section may be exercised so as to make different provision—
- (a) in relation to different descriptions of trading schemes to which this Part of this Act applies, or
  - (b) in relation to trading schemes which are or were in operation on a date specified in the regulations and trading schemes which are or were not in operation on that date,
- or in relation to different descriptions of participants in such trading schemes.

#### Textual Amendments

**F97** Words in s. 119(1) substituted (6.2.1997) by 1997 c. 32, s. 2(1)(a)(b); S.I. 1997/29, art. 2

## 120 Offences under Part XI.

- (1) Subject to the next following section, any person who issues, circulates or distributes, or causes another person to issue, circulate or distribute, an [F98 advertisement, prospectus, circular or notice] in contravention of any regulations made under subsection (1) of section 119 of this Act shall be guilty of an offence.
- (2) Any person who contravenes any regulations made under subsection (2) of that section shall be guilty of an offence.

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- (3) If any person who is a participant in a trading scheme to which this Part of this Act applies, or has applied or been invited to become a participant in such a trading scheme,
- (a) makes any payment to or for the benefit of the promoter or (if there is more than one) any of the promoters, or to or for the benefit of a participant in the trading scheme, and
  - (b) is induced to make that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who become participants in the trading scheme,
- any person to whom or for whose benefit that payment is made shall be guilty of an offence.
- (4) If the promoter or any of the promoters of a trading scheme to which this Part of this Act applies, or any other person acting in accordance with such a trading scheme, by holding out to any person such a prospect as is mentioned in subsection (3)(b) of this section, attempts to induce him—
- (a) if he is already a participant in the trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the trading scheme, or
  - (b) if he is not already a participant in the trading scheme, to become such a participant and to make any such payment as is mentioned in the preceding paragraph,
- the person attempting to induce him to make that payment shall be guilty of an offence.
- (5) In determining, for the purposes of subsection (3) or subsection (4) of this section, whether an inducement or attempt to induce is made by holding out such a prospect as is therein mentioned, it shall be sufficient if such a prospect constitutes or would constitute a substantial part of the inducement.
- (6) Where the person by whom an offence is committed under subsection (3) or subsection (4) of this section is not the sole promoter of the trading scheme in question, any other person who is the promoter or (as the case may be) one of the promoters of the trading scheme shall, subject to the next following section, also be guilty of that offence.
- (7) Nothing in subsections (3) to (6) of this section shall be construed as limiting the circumstances in which the commission of any act may constitute an offence under subsection (1) or subsection (2) of this section.
- (8) In this section any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

#### Textual Amendments

**F98** Words in s. 120(1) substituted (6.2.1997) by 1996 c. 32, s. 2(2); S.I. 1997/29, art. 2

## 121 Defences in certain proceedings under Part XI.

- (1) Where a person is charged with an offence under subsection (1) of section 120 of this Act in respect of an advertisement, it shall be a defence for him to prove that he is a person whose business it is to publish or arrange for the publication of advertisements,



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and that he received the advertisement for publication in the ordinary course of business and did not know, and had no reason to suspect, that its publication would amount to an offence under that subsection.

- (2) Where a person is charged with an offence by virtue of subsection (6) of section 120 of this Act, it shall be a defence for him to prove—
- (a) that the trading scheme to which the charge relates was in operation before the commencement of this Act, and
  - (b) that the act constituting the offence was committed without his consent or connivance.

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

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

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

## **123 Enforcement provisions.**

- (1) The provisions of sections 29 to 32 of this Act shall have effect for the purposes of this Part of this Act as if in those provisions—
- (a) references to a weights and measures authority or a duly authorised officer of such an authority were omitted, and
  - (b) any reference to an offence under section 23 of this Act were a reference to an offence under this Part of this Act.
- (2) For the purposes of the application to Northern Ireland of those provisions as applied by the preceding subsection—
- (a) any reference to the Secretary of State shall be construed as a reference to [F99 the Department of Commerce for Northern Ireland], and
  - (b) paragraphs (c) and(d) of section 33(2) of this Act shall have effect as they have effect for the purposes of the application of Part II of this Act to Northern Ireland.

### **Textual Amendments**

**F99** Words substituted by virtue of [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 5 para. 8\(1\)](#)

## **PART XII**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

## **F100 124 Publication of information and advice.**

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**Textual Amendments**

**F100** S. 124 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8)

**F101 125 Annual and other reports of Director.**

.....

**Textual Amendments**

**F101** S. 125 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8, 9)

**126** ..... **F102**

**Textual Amendments**

**F102** S. 126 repealed by [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

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

The following section shall be inserted in the <sup>M5</sup>Agricultural Marketing Act 1958 after section 19 :—

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

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

**C78** The text of section 127 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*Status: Point in time view as at 22/07/2004.*

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### Marginal Citations

M5 1958 c. 47.

128 ..... F103

### Textual Amendments

F103 S. 128 repealed by Restrictive Trade Practices Act 1976 (c. 34), Sch. 6

### F104 129 Time-limit for prosecutions.

- (1) No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Notwithstanding anything in [F105 section 127(1) of the Magistrates' Courts Act 1980], a magistrates' court may try an information for an offence under this Act if the information was laid within twelve months from the commission of the offence.
- (3) Notwithstanding anything in [F106 section 136 of the Criminal Procedure (Scotland) Act 1995], summary proceedings in Scotland for an offence under this Act may be commenced within twelve months from the commission of the offence, and [F106 subsection (3) of the said section 136] shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (4) In the application of this section to Northern Ireland, for the references in subsection (2) to [F107 section 127(1) of the Magistrates' Courts Act 1980] and to the trial and laying of an information there shall be substituted respectively references to [F108 Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981] and to the hearing and determination and making of a complaint [F109 and as if in that subsection for the words "an offence under this Act" there were substituted the words "an offence under section 30(1) [F110 or 46(2)] of this Act"].

### Textual Amendments

- F104 S. 129 applied (28.8.1996) by S.I. 1996/2199, reg. 26
- F105 Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, Sch. 7 para. 118
- F106 Words in s. 129(3) substituted (S.) (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 9(a)(b)
- F107 Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, Sch. 7 para. 118
- F108 Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), Sch. 6 para. 30
- F109 Words added (22.6.1980) by S.I. 1980/704 (N.I. 6), Sch. 1 Pt. II para. 70
- F110 Words in s. 129(4) repealed (20.6.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8)

### F111 130 Notice to Director of intended prosecution.

.....

*Status: Point in time view as at 22/07/2004.*

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**Textual Amendments**

**F111** S. 130 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**<sup>F112</sup>131 Notification of convictions and judgments to Director.**

.....

**Textual Amendments**

**F112** S. 131 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

**132 Offences by bodies corporate.**

- (1) Where an offence under section 23, [<sup>F113</sup>section 46,]<sup>F114</sup> ... [<sup>F115</sup>section 93B] or Part XI of this Act, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Textual Amendments**

**F113** Words in s. 132(1) repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26** (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8)

**F114** Words in s. 132 repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), **Sch. para. 1(9)** (with art. 3)

**F115** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 17**

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

**C79** S. 132 applied (with modifications) (28.8.1996) by [S.I. 1996/2199](#), **reg. 27**

**<sup>F116</sup>133 General restrictions on disclosure of information.**

.....

**Textual Amendments**

**F116** S. 133 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 247(b), 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 6)

*Status: Point in time view as at 22/07/2004.*

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### 134 Provisions as to orders.

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

### 135 Financial provisions.

- (1) The Secretary of State shall pay all remuneration, allowances or other sums payable under this Act to or in respect of persons who are or have been members of the Advisory Committee <sup>F117</sup> . . . , and shall defray—
  - <sup>F118</sup>(a) . . . . .
  - (b) to such amount as the Secretary of State with the approval of the Minister for the Civil Service may determine, all other expenses duly incurred by the Advisory Committee <sup>F117</sup> . . . .
- (2) There shall be defrayed out of moneys provided by Parliament—
  - (a) all expenses incurred by the Secretary of State in consequence of the provisions of this Act;
  - (b) any expenses incurred in consequence of those provisions by any other Minister of the Crown or government department, not being a [<sup>F119</sup>Northern Ireland department];
  - (c) the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director, any other sums payable under this Act to or in respect of the Director, and any expenses duly incurred by the Director or by any of his staff in consequence of the provisions [<sup>F120</sup>of this or any other Act];
  - (d) any increase attributable to this Act in the sums payable out of moneys so provided under the <sup>M6</sup>Superannuation Act 1972.
- (3) . . . . . <sup>F121</sup>

#### Textual Amendments

- F117** Words in s. 135(1) repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 1(15)(a), **Sch. 14 Pt. I** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- F118** S. 135(1)(a) repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 1(15)(b), **Sch. 14 Pt. I** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- F119** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), **Sch. 1 para. 2(1)(b)(4)**
- F120** Words substituted (4.4.1980) by Competition Act 1980 (c. 21), s. 32(2)
- F121** S. 135(3) repealed by S.I. 1973/2163, **Sch. 6**

#### Marginal Citations

- M6** 1972 c. 11.

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136 ..... F122

#### Textual Amendments

F122 S. 136 repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. XIII

### 137 General interpretation provisions.

(1) In this Act—

“the Act of 1948” means the <sup>M7</sup>Monopolies and Restrictive Practices (Inquiry and Control) Act 1948; <sup>F123</sup>

<sup>F124</sup> . . .  
F125

“the Act of 1965” means the <sup>M8</sup>Monopolies and Mergers Act 1965;

<sup>F126</sup> . . .  
F127

“contract of employment” means a contract of service or of apprenticeship, whether it is express or implied, and (if it is express) whether it is oral or in writing;

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

(2) Except in so far as the context otherwise requires, in this Act, . . . <sup>F128</sup> the following expressions have the meanings hereby assigned to them respectively, that is to say—

[<sup>F129</sup>“the Advisory Committee” means the Consumer Protection Advisory Committee;]

“agreement” means any agreement or arrangement, in whatever way and in whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

<sup>F130</sup> . . .

“the Commission” means the [<sup>F131</sup>Competition] Commission;

<sup>F130</sup> . . .

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

(a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or

(b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them,

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

[<sup>F129</sup>“the Director” means the Director General of Fair Trading;]

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“enactment” includes an enactment of the Parliament of Northern Ireland;  
“goods” includes buildings and other structures, and also includes ships,  
aircraft and hovercraft, . . . <sup>F132</sup>;

<sup>F130</sup>  
...

<sup>F130</sup>  
...

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

“Minister” includes a government department but shall not by virtue of  
this provision be taken to include the establishment consisting of the Director  
and his staff, and, except where the contrary is expressly provided, does not  
include any [<sup>F133</sup>Northern Ireland department];

<sup>F130</sup>  
...

<sup>F130</sup>  
...

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

<sup>F130</sup>  
...

<sup>F130</sup>  
...

“supply”, in relation to the supply of goods, includes supply by way of sale,  
lease, hire or hire-purchase, and, in relation to buildings or other structures,  
includes the construction of them by a person for another person;

<sup>F130</sup>  
...

<sup>F130</sup>  
...

(3) In the provisions of this Act <sup>F128</sup>... “the supply of services” does not include the  
rendering of any services under a contract of employment but, <sup>F128</sup>... ,—

- (a) includes the undertaking and performance for gain or reward of engagements  
(whether professional or other) for any matter other than the supply of goods,  
and
- (b) includes both the rendering of services to order and the provision of services  
by making them available to potential users [<sup>F134</sup>, and
- (c) includes the making of arrangements for a person to put or keep on land a  
caravan (within the meaning of Part I of the <sup>M9</sup>Caravan Sites and Control of  
Development Act 1960) other than arrangements by virtue of which the person  
may occupy the caravan as his only or main residence][<sup>F135</sup>and
- (d) includes the making of arrangements for the use by public service vehicles  
(within the meaning of the Public Passenger Vehicles Act 1981) of a parking  
place which is used as a point at which passengers on services provided by  
means of such vehicles may be taken up or set down.][<sup>F136</sup>and
- (e) includes the making of arrangements permitting use of the tunnel system  
(within the meaning of the Channel Tunnel Act 1987) by a person operating  
services for the carriage of passengers or goods by rail.][<sup>F137</sup>and
- (f) [<sup>F138</sup>includes the making of arrangements, by means of such an agreement as  
is mentioned in paragraph 29 of Schedule 2 to the Telecommunications Act  
1984, for the sharing of the use of any electronic communications apparatus,  
and]
- (g) includes the supply of network services and station services, within the  
meaning of Part I of the Railways Act 1993;

and any reference in those provisions to services supplied or to be supplied, or to  
services provided or to be provided, shall be construed accordingly.

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- [ The Secretary of State may by order made by statutory instrument—
- <sup>F139</sup>(3A) (a) provide that “the supply of services” in the provisions of this Act is to include, or to cease to include, any activity specified in the order which consists in, or in making arrangements in connection with, permitting the use of land; and
- (b) for that purpose, amend or repeal any of paragraphs (c), (d), (e) or (g) of subsection (3) above.
- (3B) No order under subsection (3A) above is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (3C) The provisions of Schedule 9 to this Act apply in the case of a draft of any such order as they apply in the case of a draft of an order to which section 91(1) above applies.]
- (4) . . . . . <sup>F140</sup>
- (5) For the purposes of the provisions of this Act . . . <sup>F128</sup>, any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of [<sup>F141</sup>section 736 of the Companies Act 1985]) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and in those provisions “interconnected bodies corporate” shall be construed accordingly, and “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (6) For the purposes of the application of any provision of this Act in relation to goods or services of a particular description or to which a particular practice applies, “consumers” means persons who are consumers (as defined by subsection (2) of this section) in relation to goods or services of that description or in relation to goods or services to which that practice applies.
- <sup>F142</sup>(7) . . . . .
- (8) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.]

#### Textual Amendments

- F123** Words substituted by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 5**
- F124** Words in s. 137(1) repealed (1.3.2000) by S.I. 2000/311, **art. 9(6)**
- F125** Definition repealed by [Resale Prices Act 1976 \(c. 53\)](#), **Sch. 3 Pt. I**
- F126** Definition repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 6**
- F127** Words in s. 137(1) repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), **Sch. para. 1(10)(a)** (with art. 3)
- F128** Words repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 6**
- F129** Words in s. 137(2) repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)
- F130** Words in s. 137(2) repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), **Sch. para. 1(10)(b)** (with art. 3)
- F131** Definition in s. 137(2) substituted (1.4.1999) by S.I. 1999/506, **art. 14**
- F132** Words repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(4), **Sch. 18**
- F133** Words substituted by virtue of [Northern Ireland Act 1974 \(c. 28\)](#), **Sch. 1 para. 2(1)(b)(4)**
- F134** Word and s. 137(3)(c) inserted (4.4.1980) by [Competition Act 1980 \(c. 21\)](#), s. 23
- F135** S. 137(3)(d) added by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 116(1)



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- F136** S. 137(3)(e) added by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), **s. 33(10)**
- F137** S. 137(3)(f) inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **s. 192(1)**
- F138** S. 137(3)(f) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 44** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F139** S. 137(3A)-(3C) inserted (1.4.1999) by 1998 c. 41, **s. 68** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- F140** S. 137(4) repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(4), **Sch. 18**
- F141** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**
- F142** S. 137(7) repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), **Sch. para. 1(10)(c)** (with art. 3)

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

- C80** Reference to enactment of Parliament of Northern Ireland to be construed as including reference to Measure of Northern Ireland Assembly: [Northern Ireland Constitution Act 1973 \(c. 36\)](#), **Sch. 5 para. 1(1)(2)**

#### **Marginal Citations**

- M7** 1948 c. 66.  
**M8** 1965 c. 50.  
**M9** 1960 c. 62.

### **138 Supplementary interpretation provisions.**

- (1) This section applies to the following provisions of this Act, that is to say, section 2(4), [<sup>F143</sup>Parts II and III,] section 137(6), and the definition of “consumer” contained in section 137(2).
- (2) For the purposes of any provisions to which this section applies it is immaterial whether any person supplying goods or services has a place of business in the United Kingdom or not.
- (3) For the purposes of any provisions to which this section applies any goods or services supplied wholly or partly outside the United Kingdom, if they are supplied in accordance with arrangements made in the United Kingdom, whether made orally or by one or more documents delivered in the United Kingdom or by correspondence posted from and to addresses in the United Kingdom, shall be treated as goods supplied to, or services supplied for, persons in the United Kingdom.
- (4) In relation to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the person conducting any antecedent negotiations, as well as the owner or seller, shall for the purposes of any provisions to which this section applies be treated as a person supplying or seeking to supply the goods.
- [<sup>F144</sup>(5) In subsection (4) of this section, the following expressions have the meanings given by, or referred to in, section 189 of the <sup>M10</sup>Consumer Credit Act 1974—
  - “antecedent negotiations”,
  - “conditional sale agreement”,
  - “credit-sale agreement”,
  - “hire-purchase agreement”.]

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- (6) In any provisions to which this section applies—
- (a) any reference to a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of such a person, and
  - (b) any reference to the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as such a guarantor;
- and in this subsection “guarantor”, in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier of the goods or services against any loss which he may incur in respect of the supply of the goods or services to or for that person.
- (7) For the purposes of any provisions to which this section applies goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or (whether under a contract or by virtue of an enactment or otherwise) is required to be made.

#### Textual Amendments

**F143** Words in s. 138 repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 26](#) (with [Sch. 24](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with arts. 3(1), 6, 8)

**F144** S. 138(5) substituted by [Consumer Credit Act 1974 \(c. 39, SIF 60\), s. 192\(4\), Sch. 4 Pt. I para. 37](#)

#### Marginal Citations

**M10** 1974 c. 39.

### 139 Amendments, repeals and transitional provisions.

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

### 140 †Short title, citation, commencement and extent.

- (1) This Act may be cited as the Fair Trading Act 1973.
- <sup>F145</sup>(2) .....
- <sup>F146</sup>(3) .....
- (4) Where any provision of this Act, other than a provision contained in Schedule 11, refers to the commencement of this Act, it shall be construed as referring to the day appointed under this section for the coming into operation of that provision.
- (5) This Act extends to Northern Ireland.

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**Textual Amendments**

**F145** S. 140(2) repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 6**

**F146** S. 140(3) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), **Sch. 1 Pt. 16** Group 2

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

**C81** Unreliable marginal note.

**C82** Power of appointment conferred by s. 140(3) fully exercised.

*Status: Point in time view as at 22/07/2004.*

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## SCHEDULES

### F147 SCHEDULE 1

Section 1.

.....

**Textual Amendments**

**F147** Sch. 1 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### F148 SCHEDULE 2

Section 3.

.....

**Textual Amendments**

**F148** Sch. 2 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 10(1)(a), 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### F149 SCHEDULE 3

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**Textual Amendments**

**F149** Sch. 3 repealed (1.4.1999) by 1998 c. 41, s. 74(1)(3), Sch. 12 para. 1(2), Sch. 14 Pt. I (with s. 73); S.I. 1999/505, art. 2, Sch. 2

### F157 SCHEDULE 4

Sections 14 and 109.

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**Textual Amendments**

**F157** Sch. 4 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

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F158 SCHEDULE 5

Sections 16, 50 and 51.

Textual Amendments

F158 Sch. 5 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

F159 SCHEDULE 6

Section 19.

Textual Amendments

F159 Sch. 6 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

F160 SCHEDULE 7

Sections 50 and 51.

Textual Amendments

F160 Sch. 7 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 6, 8)

F161 SCHEDULE 8

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

Textual Amendments

F161 Sch. 8 repealed (20.6.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8)

F162 SCHEDULE 9

Section 91.

*Status: Point in time view as at 22/07/2004.*

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#### Textual Amendments

**F162** Sch. 9 repealed (20.6.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26 (with Sch. 24); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 6, 8)

### F163F163 SCHEDULE 10

#### Textual Amendments

**F163** Schs. 10, 11 paras. 12, 13 repealed by Restrictive Trade Practices Act 1976 (c. 34), Sch. 6

F163

### SCHEDULE 11

Sections 139, 140.

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *General provisions*

- 1 (1) Subject to the following provisions of this Schedule, in so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act, it shall not be invalidated by the repeal but shall have effect as if done under that provision.
- (2) In relation to the Commission (by whichever of the names mentioned in section 4(1) of this Act it was for the time being called) sub-paragraph (1) of this paragraph applies, in particular, to any appointment of a member of the Commission (including any appointment, or extension of the term of service, of a chairman or deputy chairman of the Commission) or of any of the staff of the Commission, any reference made to the Commission, any proceedings or report of the Commission on such a reference, and any order made in consequence of any such report.
- (3) A provision of this Act shall, for the purposes of this Schedule, be regarded as corresponding to an enactment repealed by this Act if (notwithstanding that it differs, whether to a small extent or substantially, from that enactment) it fulfils in this Act a purpose similar to that which that enactment fulfilled in the repealed enactments; and any reference in this Schedule to provisions of the repealed enactments corresponding to any provisions of this Act shall be construed accordingly.
- (4) In this Schedule “the repealed enactments” means the enactments repealed by this Act, and “the commencement of this Act”, where that expression occurs in any provision of this Schedule,—
  - (a) if the same day is appointed under section 140 of this Act for the repeal of all those enactments, means the day so appointed, or
  - (b) if different days are appointed under that section for the repeal of different enactments, means such day as may be specified for the purposes of this sub-paragraph in an order made by the Secretary of State by statutory instrument;

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and different days may be so specified in relation to different provisions of this Schedule.

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

*Reference made to Commission before commencement of Act*

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

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

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

*Report of Commission made before 5th August 1965*

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

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

- 9 (1) This paragraph applies to any undertaking given to a Minister which is certified by the Secretary of State to have been given in relation to matters dealt with in a report made by the Commission on a reference under section 2 of the Act of 1948 or on a reference under section 6 of the Act of 1965 and which either—
- (a) was given before the commencement of this Act, or
  - (b) is given after the commencement of this Act in a case where no request under subsection (1) of section 88 of this Act has been made to the Director to carry out consultations in accordance with that subsection.
- (2) A copy of any certificate given by the Secretary of State under the preceding sub-paragraph shall be furnished to the Director; and the Minister to whom any such undertaking was or is given shall furnish particulars of it to the Director.
- (3) Subsection (4) of section 88 of this Act shall have effect in relation to any undertaking to which this paragraph applies as if—
- (a) it were an undertaking of which particulars have been furnished to the Director under subsection (2) of that section, and
  - (b) any reference in subsection (4) of that section to the report of the Director were a reference to a report made by the Commission as mentioned in sub-paragraph (1) of this paragraph.
- (4) The preceding provisions of this paragraph shall have effect without prejudice—
- (a) to the duty of the Commission under section 86 of this Act to transmit to the Director copies of reports which were made by the Commission before the commencement of this Act and which, by virtue of paragraphs 1 and 7 of this Schedule, have effect as if made under this Act, or



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- (b) to any duty of the Director, where requested by the appropriate Minister or Ministers to do so with respect to any such report, to carry out such consultations as are mentioned in section 88(1) of this Act.

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

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

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

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

12, 13. . . . . F164

**Textual Amendments**

F164 Schs. 10, 11 paras. 12, 13 repealed by Restrictive Trade Practices Act 1976 (c. 34), Sch. 6

*Pension benefits*

- 14 The repeal by this Act of the following enactments, that is to say, Part II of Schedule 1 to the Act of 1965 and section 3(4)(d) of the <sup>M12</sup>Superannuation (Miscellaneous Provisions) Act 1967, shall not affect the operation of those enactments in relation to any person who was appointed to be chairman or deputy chairman of the Commission before the commencement of this Act; and, in relation to any such person, a recommendation made under paragraph 5 of that Schedule shall have effect whether made before or after the commencement of this Act.

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**Marginal Citations**  
 M12 1967 c. 28.

- 15 (1) The repeal by this Act of subsections (7) and (8) of section 1 of the Act of 1956 shall not affect the operation of those subsections in relation to any person who was appointed to be the Registrar before the commencement of this Act; and, in relation to any such person, a determination made under subsection (7) of that section shall have effect whether made before or after the commencement of this Act.
- (2) Paragraph 11 of this Schedule shall not have effect for the purposes of the operation of subsection (7) or subsection (8) of section 1 of the Act of 1956 in accordance with the preceding sub-paragraph.

*Trade Descriptions Act 1968, s. 30*

- 16 The repeal by this Act of subsections (2) to (4) of section 30 of the <sup>M13</sup>Trade Descriptions Act 1968 shall not affect the operation of those subsections in their application to any case where a notice under subsection (2) of that section, or a certificate under subsection (4) of that section or a document purporting to be such a certificate, has been given or issued before the commencement of this Act; and the duty imposed by section 130(1) of this Act shall not apply where such a notice has been so given.

**Marginal Citations**  
 M13 1968 c. 29.

SCHEDULE 12

Section 139.

ENACTMENTS AMENDED

Acts	Amendment
<p>...</p> <p>F165</p> <p>The</p> <p>M14</p> <p>Agricultural Marketing Act 1958.</p>	<p>...</p> <p>In section 47, in the proviso to subsection (2), after paragraph (a) there shall be inserted the following paragraph:—</p> <p>“(aa) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any staff of that Commission, or to the Director General of Fair Trading or any staff appointed by thar Director General, if it is made for the purpose of enabling the</p>

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	Commission or the Director General to perform any functions of theirs or his under the Fair Trading Act 1973.”
F166	F166
...	...
[ <sup>F167</sup> The M15 Agricultural Marketing Act (Northern Ireland) 1964.]	[ <sup>F167</sup> In section 23, in subsection (2), after paragraph (aa) there shall be inserted the following paragraph:— “(aaa) made to the Monopolies and Mergers Commission, or to any member of that Commission or to any staff of that Commission, or to the Director General of Fair Trading or any staff appointed by thar Director General, if it is made for the purpose of enabling the Commission or the Director General to perform any functions of theirs or his under the Fair Trading Act 1973.”]
...	...
F165	...
...	...
F168	...
...	...
F165	...
The M16 Local Government Act 1972.	In section 201, in subsection (6)(a), after the words “Trades Descriptions Acts 1968 and 1972” there shall be inserted the words “or the Fair Trading Act 1973”.

### Textual Amendments

**F165** Entries repealed by [Iron and Steel Act 1975 \(c. 64\)](#), [Sch. 7, Restrictive Practices Court Act 1976 \(c. 33\)](#), [Sch.](#), [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 6](#), [Resale Prices Act 1976 \(c. 53\)](#), [Sch. 3 Pt. I](#) and [Patents Act 1977 \(c. 37\)](#), [Sch. 6](#)

**F166** Words in [Sch. 12](#) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with arts. 6, 8)

**F167** Amendment of the [Agricultural Marketing Act \(Northern Ireland\) 1964](#) repealed (*prosp.*) (but by S.R.s [1984 No. 422](#) and [1989 No. 47](#) the repeal came into operation in relation to the [Pigs Marketing Board \(Northern Ireland\)](#) on 31.12.1984 and in relation to the [Milk Marketing Board for Northern Ireland](#) on 1.4.1989 respectively) by S.I. [1982/1080 \(N.I. 12\)](#), art. 46(2), [Sch. 9](#)

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**F168** Amendment of the Pensions (Increase) Act 1971 repealed by [Judicial Pensions Act 1981 \(c. 20, SIF 71:2\)](#), s. 36(2), [Sch. 4](#)

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

**C85** The text of the amendment to [Agricultural Marketing Act 1958 \(c. 47\)](#) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**C86** The text of the amendment to the [Agricultural Marketing Act \(Northern Ireland\) 1964 \(c. 13\)](#) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**C87** The text of the amendment to the [Local Government Act 1972 \(c. 70\)](#), s. 201(6)(a) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M14** 6 & 7 Eliz. 2. c. 47.

**M15** 1964 c. 13

**M16** 1972 c. 70.

SCHEDULE 13

ENACTMENTS REPEALED

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

**C88** The text of Sch. 13 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

SCHEDULE 13  
 ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
11 & 12 Geo. 6. c. 66.	The Monopolies and Restrictive Practices (Inquiry and Control) Act 1948.	The whole Act.
4 & 5 Eliz. 2. c. 68.	The Restrictive Trade Practices Act 1956.	In section 1, subsection (1), and subsections (3) to (8). In section 11(1), the words "assistant registrar or other". In section 23, subsection (4). In section 24, subsection (8). Section 29. In section 30, in subsection (3), the words from the beginning of the subsection to the word "and", and subsections (4), (6) and (7). Section 31. Section 33. In section 35, paragraph (e) of subsection (1). In section 36(1), the definition of "the Registrar".
5 & 6 Eliz. 2. c. 20.	The House of Commons Disqualification Act 1957.	In Part III of Schedule 1, and in the Part substituted for the said Part III by Schedule 3, the words "Registrar of Restrictive Trading Agreements".
6 & 7 Eliz. 2. c. 51.	The Public Records Act 1958.	In Schedule 2, the entries relating to section 17 of the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 and section 33 of the Restrictive Trade Practices Act 1956.
1964 c. 58.	The Resale Prices Act 1964.	In section 8, subsection (4). In section 11(f), the definition of "the Registrar".

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Chapter	Short Title	Extent of Repeal
1965 c. 50.	The Monopolies and Mergers Act 1965.	The whole Act.
1967 c. 28.	The Superannuation (Miscellaneous Provisions) Act 1967.	In section 3, paragraph (d) of subsection (4).
1968 c. 29.	The Trade Descriptions Act 1968.	In section 30, subsections (2) to (4).
1968 c. 66.	The Restrictive Trade Practices Act 1968.	Section 11.
1972 c. 68.	The European Communities Act 1972.	In section 10, subsection (3).

**Status:**

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