

Status: Point in time view as at 26/11/2008.

Changes to legislation: Transport Act 2000, SCHEDULE 10 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 153.

COMPETITION TEST FOR EXERCISE OF BUS FUNCTIONS

Functions to which Schedule applies

- 1 (1) The functions to which this Schedule applies are those of—
 - (a) making and varying quality partnership schemes,
 - (b) making and varying ticketing schemes, and
 - (c) inviting and accepting tenders under section 89 or 91 of the ^{M1}Transport Act 1985 (subsidised services).
- (2) For the purposes of this Schedule an authority proposes (or authorities propose) to exercise a function to which this Schedule applies—
 - (a) in the case of the function of making or varying a quality partnership scheme, once notice of a proposal to make or vary it has been given under section 115(1),
 - (b) in the case of the function of making or varying a ticketing scheme, once notice of a proposal to make or vary it has been given under section 136(1), and
 - (c) in the case of the function of inviting or accepting tenders under section 89 or 91 of the ^{M2}Transport Act 1985, once it is proposed to invite tenders under section 89(2) or 91(3) of that Act or to accept or not to accept a tender under section 89 of that Act.

Commencement Information

II Sch. 10 para. 1 partly in force; Sch. 10 para. 1 not in force at Royal Assent see s. 275(1); Sch. 10 para. 1(1)(b)(c)(2)(b)(c) in force (E.) at 1.2.2001 by [S.I. 2001/57](#), [art. 3\(2\)](#), [Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 1(1)(b)(c)(2)(b)(c) in force (W.) at 1.8.2001 by [S.I. 2001/2788](#), [art. 2](#), [Sch. 1 para. 8](#)

Marginal Citations

M1 1985 c. 67.
M2 1985 c. 67.

Competition test

- 2 (1) For the purposes of this Schedule the exercise or proposed exercise of a function to which this Schedule applies meets the competition test unless it—
 - (a) has or is likely to have a significantly adverse effect on competition, and
 - (b) is not justified by sub-paragraph (2).
- (2) The exercise or proposed exercise of a function is justified if—

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- (a) it is with a view to achieving one or more of the purposes specified in sub-paragraph (3), and
 - (b) its effect on competition is or is likely to be proportionate to the achievement of that purpose or any of those purposes.
- (3) The purposes referred to in sub-paragraph (2) are—
- (a) securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services,
 - (b) securing other improvements in local services of substantial benefit to users of local services, and
 - (c) reducing or limiting traffic congestion, noise or air pollution.

Commencement Information

I2 Sch. 10 para. 2 wholly in force at 1.8.2001; Sch. 10 para. 2 not in force at Royal Assent see s. 275(1); Sch. 10 para. 2 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\)](#), [Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 2 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2](#), [Sch. 1 para. 8](#)

Applications to [F1OFT] for decision

Textual Amendments

F1 Word in Sch. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

- 3
- (1) An application may be made to [F2the Office of Fair Trading (in this Schedule referred to as “the OFT”) for it] to decide whether the exercise or proposed exercise of a function to which this Schedule applies meets the competition test.
 - (2) An application may be made under this paragraph by—
 - (a) the authority or authorities by whom the function has been exercised or is proposed to be exercised, or
 - (b) any operator of local services who is, or is likely to be, affected by the exercise of the function.

Textual Amendments

F2 Words in Sch. 10 para. 3(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

Commencement Information

I3 Sch. 10 para. 3 wholly in force at 1.8.2001; Sch. 10 para. 3 not in force at Royal Assent see s. 275(1); Sch. 10 para. 3 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\)](#), [Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 3 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2](#), [Sch. 1 para. 8](#)

- 4
- (1) If an application is made under paragraph 3 by the authority or authorities by whom a function has been exercised or is proposed to be exercised, it or they must inform any operators of local services who, in the opinion of the authority or authorities,

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are or are likely to be affected by the exercise of the function that the application has been made.

- (2) If an application is made under paragraph 3 by an operator of local services, he must inform the authority or authorities by whom the function has been exercised or is proposed to be exercised that the application has been made. on.
- (3) The [F¹OFT] must arrange for an application made under paragraph 3 to be published in such a way as [F³it thinks] most suitable for [F⁴bringing the application] to the attention of those likely to be affected by it, unless [F⁵the OFT is] satisfied that it will be sufficient F⁶... to seek information from one or more particular persons.
- (4) The [F¹OFT] may at any time decide not to consider, or further consider, an application made under paragraph 3 if —
 - (a) [F⁷it] is of the opinion that [F⁷it] has not been provided with sufficient information to do so by the person or persons by whom the application was made, or
 - (b) sub-paragraph (1) or (2) has not been complied with.
- (5) In determining an application made under paragraph 3, the [F¹OFT] must take into account any representations made to [F⁸it] about the application

Textual Amendments

- F3** Words in Sch. 10 para. 4(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(c\)\(i\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F4** Words in Sch. 10 para. 4(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(c\)\(ii\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F5** Words in Sch. 10 para. 4(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(c\)\(iii\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F6** Words in Sch. 10 para. 4(3) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(c\)\(iv\), 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.)
- F7** Word in Sch. 10 para. 4(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(d\)\(i\)](#); 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** Word in Sch. 10 para. 4(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(d\)\(ii\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Commencement Information

- I4** Sch. 10 para. 4 wholly in force at 1.8.2001; Sch. 10 para. 4 not in force at Royal Assent see s. 275(1); Sch. 10 para. 4 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. 1](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 4 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2, Sch. 1 para. 8](#)

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Investigations by ^{F1}OFT]

- 5 If at any time the ^{F1}OFT] considers that the exercise or proposed exercise of a function to which this Schedule applies may not meet the competition test, ^{F9}it] may conduct an investigation.

Textual Amendments

- F9** Word in Sch. 10 para. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(e\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

Commencement Information

- I5** Sch. 10 para. 5 wholly in force at 1.8.2001; Sch. 10 para. 5 not in force at Royal Assent see s. 275(1); Sch. 10 para. 5 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 5 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2, Sch. 1 para. 8](#)

- 6 (1) For the purposes of an investigation under paragraph 5 the ^{F1}OFT] may require any person—
- (a) to produce to ^{F10}it] or to a person appointed by ^{F10}it], at a specified time and place, any specified document, or
 - (b) to provide ^{F10}it] or such a person, at such a time and place, any specified information,
- which ^{F10}the OFT] considers relates to any matter relevant to the investigation.
- (2) The power conferred by sub-paragraph (1) is to be exercised by a notice in writing indicating the subject matter and purpose of the investigation; and in this paragraph “specified” means—
- (a) specified, or described, in the notice, or
 - (b) falling within a category which is specified, or described, in the notice.
- (3) Information required to be provided under sub-paragraph (1) shall be provided in the specified manner and form.
- (4) The power conferred by sub-paragraph (1) to require a person to produce a document includes power—
- (a) to require him to provide an explanation of the document, or
 - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.
- (5) In this paragraph “information” includes estimates and forecasts.

Textual Amendments

- F10** Words in Sch. 10 para. 6(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(f\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

Commencement Information

- I6** Sch. 10 para. 6 wholly in force at 1.8.2001; Sch. 10 para. 6 not in force at Royal Assent see s. 275(1); Sch. 10 para. 6 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 6 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2, Sch. 1 para. 8](#)

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- 7 (1) If a person refuses or fails to comply with a notice under paragraph 6, the [^{F1}OFT] may certify that fact in writing to the High Court which may enquire into the case.
- (2) If after hearing—
- (a) any witness who may be produced against or on behalf of the person, and
 - (b) any statement which may be offered in defence,
- the High Court is satisfied that the person did not have a reasonable excuse for refusing or failing to comply with the notice, the High Court may punish him as if he had been guilty of contempt of court.

Commencement Information

I7 Sch. 10 para. 7 wholly in force at 1.8.2001; Sch. 10 para. 7 not in force at Royal Assent see s. 275(1); Sch. 10 para. 7 in force (E.) at 1.2.2001 by S.I. 2001/57, art. 3(2), **Sch. 3 Pt. I** (subject to the savings in **Sch. 3 Pt. II**); Sch. 10 para. 7 in force (W.) at 1.8.2001 by S.I. 2001/2788, art. 2, **Sch. 1 para. 8**

- 8 (1) A person shall not be required under paragraph 6 to produce or disclose a privileged communication.
- (2) In sub-paragraph (1) “privileged communication” means a communication—
- (a) between a professional legal adviser and his client, or
 - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
- which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

Commencement Information

I8 Sch. 10 para. 8 wholly in force at 1.8.2001; Sch. 10 para. 8 not in force at Royal Assent see s. 275(1); Sch. 10 para. 8 in force (E.) at 1.2.2001 by S.I. 2001/57, art. 3(2), **Sch. 3 Pt. I** (subject to the savings in **Sch. 3 Pt. II**); Sch. 10 para. 8 in force (W.) at 1.8.2001 by S.I. 2001/2788, art. 2, **Sch. 1 para. 8**

- 9 Before the [^{F1}OFT], as the result of an investigation under paragraph 5, makes a decision that the exercise or proposed exercise of a function does not meet the competition test, [^{F11}the OFT] must—
- (a) give written notice to the person or persons likely to be affected by the proposed decision, and
 - (b) give that person or those persons an opportunity to make representations.

Textual Amendments

F11 Words in Sch. 10 para. 9 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 44(12)(g)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Commencement Information

I9 Sch. 10 para. 9 wholly in force at 1.8.2001; Sch. 10 para. 9 not in force at Royal Assent see s. 275(1); Sch. 10 para. 9 in force (E.) at 1.2.2001 by S.I. 2001/57, art. 3(2), **Sch. 3 Pt. I** (subject to the savings in **Sch. 3 Pt. II**); Sch. 10 para. 9 in force (W.) at 1.8.2001 by S.I. 2001/2788, art. 2, **Sch. 1 para. 8**

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Decisions

- 10 When the [F¹OFT] makes a decision—
- (a) on an application under paragraph 3, or
 - (b) after an investigation under paragraph 5,
- [F¹²the OFT] must publish [F¹²its] decision, together with [F¹²its] reasons for making it.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F12** Words in Sch. 10 para. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(h\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

Commencement Information

- I10** Sch. 10 para. 10 wholly in force at 1.8.2001; Sch. 10 para. 10 not in force at Royal Assent see s. 275(1); Sch. 10 para. 10 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 10 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2, Sch. 1 para. 8](#)

- 11 If the [F¹OFT] has determined an application under paragraph 3 by making a decision that the exercise or proposed exercise of a function to which this Schedule applies meets the competition test, [F¹³the OFT] is to take no further action under this Schedule with respect to it unless—
- (a) [F¹³the OFT] has reasonable grounds for believing that there has been a material change of circumstance since [F¹³the OFT] made [F¹³its] decision, or
 - (b) [F¹³the OFT] has a reasonable suspicion that the information on which [F¹³the OFT] based [F¹³its] decision was incomplete, false or misleading in a material particular.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F13** Words in Sch. 10 para. 11 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

Commencement Information

- I11** Sch. 10 para. 11 wholly in force at 1.8.2001; Sch. 10 para. 11 not in force at Royal Assent see s. 275(1); Sch. 10 para. 11 in force (E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 11 in force (W.) at 1.8.2001 by [S.I. 2001/2788, art. 2, Sch. 1 para. 8](#)

Enforcement of decisions

- 12 (1) If the [F¹OFT] has made a decision that the exercise or proposed exercise of a function to which this Schedule applies does not meet the competition test, [F¹⁴the OFT] may

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give to the authority or authorities by which it was or was to be exercised such directions as [^{F14}the OFT] considers appropriate.

- (2) A direction under sub-paragraph (1) may (in particular)—
- (a) in the case of a proposal to exercise a function, include provision prohibiting the exercise of the function in the manner proposed,
 - (b) in the case of the exercise of the function of making or varying a quality partnership scheme or a ticketing scheme, include provision requiring the variation or revocation of the scheme,
 - (c) in the case of the exercise of the function of inviting tenders under section 89(2) or 91(3) of the ^{M3}Transport Act 1985, include provision requiring the variation or withdrawal of the invitation, and
 - (d) in the case of the exercise of the function of accepting or not accepting a tender under section 89 or 91 of that Act, include provision requiring the variation or termination of any agreement entered into by accepting the tender or requiring the acceptance of any tender.
- (3) A direction under sub-paragraph (1) must be given in writing.
- (4) If an authority fails, without reasonable excuse, to comply with a direction under sub-paragraph (1), the [^{F1}OFT] may apply to the High Court for an order requiring the authority to comply with the direction within a time specified in the order.
- (5) An order under sub-paragraph (4) may provide for all of the costs of, or incidental to, the application for the order to be borne by the authority.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F14** Words in Sch. 10 para. 12(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 44\(12\)\(j\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

Commencement Information

- I12** Sch. 10 para. 12 partly in force; Sch. 10 para. 12 not in force at Royal Assent see s. 275(1); Sch. 10 para. 12 in force (E.) (except the words “a quality partnership scheme or” in para. 12(2))(E.) at 1.2.2001 by [S.I. 2001/57, art. 3\(2\), Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 12 in force (W.) (except the words “a quality partnership scheme or” in para. 12(2)) at 1.8.2001 by [S.I. 2001/2788, art. 2, Sch. 1 para. 8](#)

Marginal Citations

- M3** 1985 c. 67.

Information

- 13 (1) No information which—
- (a) has been obtained by the [^{F1}OFT] in connection with [^{F15}its] functions under this Schedule, and
 - (b) relates to the affairs of any individual or to any particular business,

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is to be disclosed during the lifetime of that individual or while that business continues to be carried on, unless the condition mentioned in sub-paragraph (2) is satisfied.

- (2) The condition is that consent to the disclosure has been obtained from—
- (a) the person from whom the information was obtained, and
 - (b) if different, the individual to whose affairs the information relates or the person for the time being carrying on the business to which the information relates.
- (3) Sub-paragraph (1) does not apply to a disclosure of information—
- (a) made for the purpose of facilitating the performance of any function of the [F1OFT], a traffic commissioner or the [F16Office of Rail Regulation],
 - (b) made for the purpose of facilitating the performance of any function of the European Commission in respect of Community law about competition,
 - (c) made for the purpose of criminal proceedings in any part of the United Kingdom or in connection with the investigation of a criminal offence triable in any part of the United Kingdom, or
 - (d) made in compliance with the order of a court or tribunal.
- (4) If information is disclosed to the public in circumstances in which the disclosure does not contravene sub-paragraph (1), that sub-paragraph does not prevent its further disclosure by any person.
- (5) A person who contravenes this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 44\(12\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F15** Word in Sch. 10 paras. 13-15 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 44\(12\)\(k\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F16** Words in Sch. 10 para. 13 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), [Sch. 2 para. 19\(t\)\(iv\)](#); [S.I. 2004/827](#), art. 4(g)

Modifications etc. (not altering text)

- C1** Sch. 10 para. 13(3): Disclosure powers extended (14.12.2001) by [2001 c. 24](#), ss. 17, 127(2)(a), [Sch. 4 Pt. I para. 53\(2\)](#)

Commencement Information

- I13** Sch. 10 para. 13 wholly in force at 1.8.2001; Sch. 10 para. 13 not in force at Royal Assent see s. 275(1); Sch. 10 para. 13 in force (E.) at 1.2.2001 by [S.I. 2001/57](#), art. 3(2), [Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 13 in force (W.) at 1.8.2001 by [S.I. 2001/2788](#), art. 2, [Sch. 1 para. 8](#)

- 14 (1) If information is provided by a person to the [F1OFT] in connection with [F15:its] functions under this Schedule, the person is guilty of an offence if—
- (a) the information is false or misleading in a material particular, and
 - (b) the person knows that it is or is reckless as to whether it is.
- (2) If a person—

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- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provides to another person any information which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the [F1OFT] in connection with [F15:its] functions under this Schedule, the person is guilty of an offence.

- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 44(12)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F15** Word in Sch. 10 paras. 13-15 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 44(12)(k); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Commencement Information

- I14** Sch. 10 para. 14 wholly in force at 1.8.2001; Sch. 10 para. 14 not in force at Royal Assent see s. 275(1); Sch. 10 para. 14 in force (E.) at 1.2.2001 by S.I. 2001/57, art. 3(2), Sch. 3 Pt. I (subject to the savings in Sch. 3 Pt. II); Sch. 10 para. 14 in force (W.) at 1.8.2001 by S.I. 2001/2788, art. 2, Sch. 1 para. 8

Defamation

- 15 For the purposes of the law relating to defamation, absolute privilege attaches to any decision made or notice given by the [F1OFT] in the exercise of any of [F15:its] functions under this Schedule.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 44(12)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F15** Word in Sch. 10 paras. 13-15 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 44(12)(k); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Commencement Information

- I15** Sch. 10 para. 15 wholly in force at 1.8.2001; Sch. 10 para. 15 not in force at Royal Assent see s. 275(1); Sch. 10 para. 15 in force (E.) at 1.2.2001 by S.I. 2001/57, art. 3(2), Sch. 3 Pt. I (subject to the savings in Sch. 3 Pt. II); Sch. 10 para. 15 in force (W.) at 1.8.2001 by S.I. 2001/2788, art. 2, Sch. 1 para. 8

Fees

- 16 (1) The [F1OFT] may charge fees in connection with the exercise by [F17:the OFT] of any of [F17:its] functions under this Schedule.
- (2) Different fees may be charged in connection with different functions and in different circumstances.

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- (3) An application under paragraph 3 is not to be regarded as duly made unless any appropriate fee is paid.

Textual Amendments

- F1** Word in Sch. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 44\(12\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F17** Words in Sch. 10 para. 16 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 44\(12\)\(1\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

Commencement Information

- I16** Sch. 10 para. 16 wholly in force at 1.8.2001; Sch. 10 para. 16 not in force at Royal Assent see s. 275(1); Sch. 10 para. 16 in force (E.) at 1.2.2001 by [S.I. 2001/57](#), art. 3(2), [Sch. 3 Pt. I](#) (subject to the savings in [Sch. 3 Pt. II](#)); Sch. 10 para. 16 in force (W.) at 1.8.2001 by [S.I. 2001/2788](#), art. 2, [Sch. 1 para. 8](#)

[^{F18}PART 2

TEST FOR CERTAIN AGREEMENTS, DECISIONS AND PRACTICES

Textual Amendments

- F18** Sch. 10 Pt. 2 inserted (26.11.2008 for specified purposes, 9.2.2009 for E. in so far as not already in force, 1.4.2009 for W. in so far as not already in force) by [Local Transport Act 2008 \(c. 26\)](#), s. 134(1)(c)(4), [Sch. 2 para. 15](#); [S.I. 2009/107](#), art. 2(2), [Sch. 2 Pt. 1](#); [S.I. 2009/579](#), art. 2(d)

Interpretation

- 17 (1) This paragraph applies for the purposes of the interpretation of this Part of this Schedule.
- (2) A voluntary multilateral agreement (a “VMA”) is a voluntary partnership agreement (within the meaning given by section 153) to which two or more operators of local services are parties.
- (3) A voluntary bilateral agreement (a “VBA”) is a voluntary partnership agreement (within the meaning given by that section) to which only one operator of local services is a party.
- (4) In this Part of this Schedule—
- (a) a “qualifying agreement” is an agreement between bus undertakings only;
 - (b) a “qualifying decision” is so much of any decision by an association of undertakings as relates to the operation of local services;
 - (c) a “qualifying practice” is a concerted practice by bus undertakings only.
- (5) For the purposes of sub-paragraph (4)—
- (a) a bus undertaking is an undertaking which is the operator of a local service;
 - (b) the involvement of a local authority which is not a bus undertaking is to be disregarded;

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- (c) a quality partnership scheme or voluntary partnership agreement is not to be regarded as a qualifying agreement, qualifying decision or qualifying practice.
- (6) In sub-paragraph (5)(b) “local authority” means—
 - (a) a local transport authority;
 - (b) a district council in England.
- (7) A provision of this Part of this Schedule which is expressed to apply to, or in relation to, a qualifying agreement is to be read as applying equally to, or in relation to, a qualifying decision or a qualifying practice (but with any necessary modifications).
- (8) A reference to the area of an authority—
 - (a) in relation to a VMA or VBA, is a reference to the area of a local transport authority who are a party to the agreement;
 - (b) in relation to a qualifying agreement, is a reference to the area of a local transport authority in whose area the agreement is, or is to be, implemented.
- (9) The “bus improvement objectives” are—
 - (a) securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services,
 - (b) securing other improvements in local services of benefit to users of local services, and
 - (c) reducing or limiting traffic congestion, noise or air pollution.

Agreements, decisions and practices to which this Part of this Schedule applies

- 18 (1) This Part of this Schedule applies to—
- (a) VMAs or VBAs falling within sub-paragraph (2), and
 - (b) qualifying agreements falling within sub-paragraph (3).

This paragraph is subject to paragraph 19.

- (2) A VMA or VBA falls within this sub-paragraph if it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities.
- (3) A qualifying agreement falls within this sub-paragraph if—
 - (a) it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities, but
 - (b) the authority, or any of the authorities, has certified that they have considered all the terms and effects (or likely effects) of the agreement and that in their opinion the requirements mentioned in sub-paragraph (4) are satisfied.
- (4) The requirements are that the agreement—
 - (a) is in the interests of persons using local services within the area of the authority, or the combined area of the authorities, and
 - (b) does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the bus improvement objectives.
- (5) For the purposes of sub-paragraph (2)—

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- (a) the object or effect of a VMA may be considered either on its own or together with one or more other VMAs, VBAs or qualifying agreements;
 - (b) the object or effect of a VBA is to be considered together with one or more VMAs, other VBAs or qualifying agreements.
- (6) For the purposes of sub-paragraph (3) the object or effect of a qualifying agreement may be considered either on its own or together with one or more VMAs, VBAs or other qualifying agreements.
- 19 (1) This Part of this Schedule does not apply to a VMA, VBA or qualifying agreement if it (or any of its provisions) constitutes a price-fixing agreement within the meaning given by section 39(9) of the Competition Act 1998.
- (2) Where the standard of services specified in a VMA or VBA includes any requirement as to maximum fares (see section 153(3)), any provision of that agreement relating to the setting, review or revision of the maximum fare is not to be regarded as constituting a price-fixing agreement for the purposes of sub-paragraph (1).

The prohibition

- 20 (1) Any VMA, VBA or qualifying agreement to which this Part of this Schedule applies is prohibited unless it is exempt in accordance with the provisions of this Part of this Schedule.
- (2) The prohibition in sub-paragraph (1) applies in place of the Chapter 1 prohibition.
- (3) The Chapter 1 prohibition is the prohibition imposed by section 2(1) of the Competition Act 1998.

Agreements and decisions void

- 21 Any agreement or decision which is prohibited by paragraph 20 is void.

Exempt agreements

- 22 (1) A VMA, VBA or qualifying agreement to which this Part of this Schedule applies is exempt if—
- (a) it contributes to the attainment of one or more of the bus improvement objectives,
 - (b) it does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
 - (c) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question.
- (2) In any proceedings in which it is alleged that the prohibition in paragraph 20 is being or has been infringed by a VMA, VBA or qualifying agreement any undertaking or association of undertakings claiming the benefit of sub-paragraph (1) shall bear the burden of proving that the conditions of that sub-paragraph are satisfied.

Application of provisions of Competition Act 1998

- 23 (1) The provisions of Part 1 of the Competition Act 1998 (“the 1998 Act”) specified in sub-paragraph (2) apply in relation to the prohibition in paragraph 20 (and a VMA, VBA or qualifying agreement to which this Part of this Schedule applies) as those

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provisions apply in relation to the Chapter 1 prohibition (and an agreement to which the provisions of that Chapter apply).

- (2) The provisions are—
 - (a) in Chapter 1, sections 3, 6, 8, 10 and 11 (excluded agreements and exemptions);
 - (b) Chapter 3 (investigations and enforcement), except sections 36 to 39 (penalties);
 - (c) in Chapter 4, sections 46 to 49 (appeals);
 - (d) Chapter 5 (miscellaneous), except section 54 (regulators).
- (3) The application, by virtue of sub-paragraph (2)(d), of Chapter 5 includes section 52(1) of the 1998 Act; but this is subject to the following modifications—
 - (a) the reference to the passing of the 1998 Act is to be read as a reference to the passing of the Local Transport Act 2008;
 - (b) the reference to the Director is to be read as a reference to the OFT.
- (4) The application, in accordance with sub-paragraph (1), of the provisions mentioned in sub-paragraph (2) is to be subject to such further modifications as the Secretary of State may by order provide.]

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