Enterprise Act 2002 (repealed)

2002 CHAPTER 40

Textual Amendments applied to the whole legislation

F1 Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of Constitutional Reform Act 2005 (c. 4), ss. 59, 148(1), **Sch. 11 para. 5** [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

PART 1

THE OFFICE OF FAIR TRADING

Modifications etc. (not altering text)

C1 Pt. 1 function transferred (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), **2** (with arts. 2(3), 4)

Establishment of OFT

1 The Office of Fair Trading

(1) There shall be a body corporate to be known as the Office of Fair Trading (in this Act referred to as "the OFT").

(2) The functions of the OFT are carried out on behalf of the Crown.

(3) Schedule 1 (which makes further provision about the OFT) has effect.

(4) In managing its affairs the OFT shall have regard, in addition to any relevant general guidance as to the governance of public bodies, to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the OFT.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 April 2024.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)*

2 The Director General of Fair Trading

(1) The functions of the Director General of Fair Trading (in this Act referred to as "the Director"), and his property, rights and liabilities, are transferred to the OFT.

(2) The office of the Director is abolished.

(3) Any enactment, instrument or other document passed or made before the commencement of subsection (1) which refers to the Director shall have effect, so far as necessary for the purposes of or in consequence of anything being transferred, as if any reference to the Director were a reference to the OFT.

3 Annual plan

(1) The OFT shall, before each financial year, publish a document (the "annual plan") containing a statement of its main objectives and priorities for the year.

(2) The OFT shall for the purposes of public consultation publish a document containing proposals for its annual plan at least two months before publishing the annual plan for any year.

(3) The OFT shall lay before Parliament a copy of each document published under subsection (2) and each annual plan.

4 Annual and other reports

(1) The OFT shall, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the "annual report") on its activities and performance during that year.

(2) The annual report for each year shall include—

(a) a general survey of developments in respect of matters relating to the OFT's functions;

(b) an assessment of the extent to which the OFT's main objectives and priorities for the year (as set out in the annual plan) have been met;

(c) a summary of the significant decisions, investigations or other activities made or carried out by the OFT during the year;

(d) a summary of the allocation of the OFT's financial resources to its various activities during the year; and

(e) an assessment of the OFT's performance and practices in relation to its enforcement functions.

(3) The OFT shall lay a copy of each annual report before Parliament and arrange for the report to be published.

(4) The OFT may—

(a) prepare other reports in respect of matters relating to any of its functions; and

(b) arrange for any such report to be published.

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General functions of OFT

5 Acquisition of information etc.

(1) The OFT has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions.

(2) That function is to be carried out with a view to (among other things) ensuring that the OFT has sufficient information to take informed decisions and to carry out its other functions effectively.

(3) In carrying out that function the OFT may carry out, commission or support (financially or otherwise) research.

6 Provision of information etc. to the public

(1) The OFT has the function of—

(a) making the public aware of the ways in which competition may benefit consumers in, and the economy of, the United Kingdom; and

(b) giving information or advice in respect of matters relating to any of its functions to the public.

(2) In carrying out those functions the OFT may—

(a) publish educational materials or carry out other educational activities; or

(b) support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.

7 Provision of information and advice to Ministers etc.

(1) The OFT has the function of—

(a) making proposals, or

(b) giving other information or advice,

on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law).

(2) A Minister of the Crown may request the OFT to make proposals or give other information or advice on any matter relating to any of its functions; and the OFT shall, so far as is reasonably practicable and consistent with its other functions, comply with the request.

8 Promoting good consumer practice

(1) The OFT has the function of promoting good practice in the carrying out of activities which may affect the economic interests of consumers in the United Kingdom.

(2) In carrying out that function the OFT may (without prejudice to the generality of subsection (1)) make arrangements for approving consumer codes and may, in accordance with the arrangements, give its approval to or withdraw its approval from any consumer code.

(3) Any such arrangements must specify the criteria to be applied by the OFT in determining whether to give approval to or withdraw approval from a consumer code.

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(4) Any such arrangements may in particular—

(a) specify descriptions of consumer code which may be the subject of an application to the OFT for approval (and any such description may be framed by reference to any feature of a consumer code, including the persons who are, or are to be, subject to the code, the manner in which it is, or is to be, operated and the persons responsible for its operation); and

(b) provide for the use in accordance with the arrangements of an official symbol intended to signify that a consumer code is approved by the OFT.

(5) The OFT shall publish any arrangements under subsection (2) in such manner it considers appropriate.

(6) In this section "consumer code" means a code of practice or other document (however described) intended, with a view to safeguarding or promoting the interests of consumers, to regulate by any means the conduct of persons engaged in the supply of goods or services to consumers (or the conduct of their employees or representatives).

[F1 8A Exclusion of public consumer advice scheme

The OFT may not under this Part support a public consumer advice scheme, where that support of a scheme consists of providing, or securing the provision of, an arrangement for giving advice without charge to individual consumers on matters personal to them.]

Textual Amendments

F1 S. 8A inserted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), **3**

Miscellaneous

9 Repeal of certain powers of direction

Section 12 of the Fair Trading Act 1973 (c. 41) (in this Act referred to as "the 1973 Act") and section 13 of the Competition Act 1980 (c. 21) (powers of Secretary of State to give directions) shall cease to have effect.

10 Part 2 of the 1973 Act

(1) The following provisions of the 1973 Act shall cease to have effect—

(a) section 3 and Schedule 2 (which establish, and make provision with respect to, the Consumer Protection Advisory Committee);

(b) sections 13 to 21 (which relate to references made to, and reports of, that Committee); and

(c) section 22 (power of Secretary of State to make orders in pursuance of a report of that Committee).

F2(2) . . . . . .

(3) If the orders saved by subsection (2)(a) have been revoked, the Secretary of State may by order—

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(a) repeal any unrepealed provision of Part 2 of the 1973 Act and subsection (2) above; and

(b) make such other consequential modifications of any Act or subordinate legislation (whenever passed or made) as he thinks fit.

(4) An order under subsection (3)—

(a) may make transitional or saving provision in connection with any modification made by the order; and

(b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F2 S. 10(2) repealed (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, Sch. 2 para. 69, **Sch. 4 Pt. 1** (with reg. 28(2)(3))

11 Super-complaints to OFT

(1) This section applies where a designated consumer body makes a complaint to the OFT that any feature, or combination of features, of a market in the United Kingdom for goods or services is or appears to be significantly harming the interests of consumers.

(2) The OFT must, within 90 days after the day on which it receives the complaint, publish a response stating how it proposes to deal with the complaint, and in particular—

(a) whether it has decided to take any action, or to take no action, in response to the complaint, and

(b) if it has decided to take action, what action it proposes to take.

(3) The response must state the OFT's reasons for its proposals.

(4) The Secretary of State may by order amend subsection (2) by substituting any period for the period for the time being specified there.

(5) "Designated consumer body" means a body designated by the Secretary of State by order.

(6) The Secretary of State—

(a) may designate a body only if it appears to him to represent the interests of consumers of any description, and

(b) must publish (and may from time to time vary) other criteria to be applied by him in determining whether to make or revoke a designation.

(7) The OFT—

(a) must issue guidance as to the presentation by the complainant of a reasoned case for the complaint, and

(b) may issue such other guidance as appears to it to be appropriate for the purposes of this section.

(8) An order under this section—

(a) shall be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(9) In this section—

(a) references to a feature of a market in the United Kingdom for goods or services have the same meaning as if contained in Part 4, and

(b) "consumer" means an individual who is a consumer within the meaning of that Part.

Modifications etc. (not altering text)

C2 S. 11 (except s. 11(7)(a)) applied in part (20.6.2003) by The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 (S.I. 2003/1368), **art. 2**

PART 2

THE COMPETITION APPEAL TRIBUNAL

The Competition Appeal Tribunal

12 The Competition Appeal Tribunal

(1) There shall be a tribunal, to be called the Competition Appeal Tribunal (in this Part referred to as "the Tribunal").

(2) The Tribunal shall consist of—

(a) a person appointed by the Lord Chancellor to preside over the Tribunal (in this Part referred to as "the President");

(b) members appointed by the Lord Chancellor to form a panel of chairmen; and

(c) members appointed by the Secretary of State to form a panel of ordinary members.

(3) The Tribunal shall have a Registrar appointed by the Secretary of State.

(4) The expenses of the Tribunal shall be paid by the Competition Service.

(5) Schedule 2 (which makes further provision about the Tribunal) has effect.

13 The Competition Service

(1) There shall be a body corporate called the Competition Service (in this Part referred to as "the Service").

(2) The purpose of the Service is to fund, and provide support services to, the Competition Appeal Tribunal.

(3) In subsection (2) "support services" includes the provision of staff, accommodation and equipment and any other services which facilitate the carrying out by the Tribunal of its functions.

(4) The activities of the Service are not carried out on behalf of the Crown (and its property is not to be regarded as held on behalf of the Crown).

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(5) The Secretary of State shall pay to the Service such sums as he considers appropriate to enable it to fund the activities of the Tribunal and to carry out its other activities.

(6) Schedule 3 (which makes further provision about the Service) has effect.

Commencement Information

I1 S. 13 wholly in force at 1.4.2003; s. 13 not in force at Royal Assent see s. 279; s. 13(6) in force for certain purposes at 18.3.2003 by S.I. 2003/765, **art. 2**, Sch., s. 13 in force at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch.

14 Constitution of Tribunal for particular proceedings and its decisions

(1) For the purposes of any proceedings before it the Tribunal shall consist of a chairman and two other members.

(2) The chairman must be the President or a member of the panel of chairmen.

(3) The other members may be chosen from either the panel of chairmen or the panel of ordinary members.

(4) If the members of the Tribunal as constituted in accordance with this section are unable to agree on any decision, the decision is to be taken by majority vote.

(5) This section has effect subject to paragraph 18 of Schedule 4 (consequences of a member of the Tribunal being unable to continue after the proceedings have begun to be heard).

(6) Part 1 of Schedule 4 (which makes further provision about the decisions of the Tribunal and their enforcement) has effect.

Modifications etc. (not altering text)

C3 S. 14 applied (1.5.2009 for specified purposes, 1.11.2009 in so far as not already in force) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(b)(c), **106** (with reg. 3)

Commencement Information

I2 S. 14 wholly in force at 20.6.2003; s. 14 not in force at Royal Assent see s. 279; s. 14(1)-(5) in force and s. 14(6) in force for certain purposes at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., s. 14(6) in force for remaining purposes at 20.6.2003 by S.I. 2003/1397, **art. 2**, Sch.

15 Tribunal rules

(1) The Secretary of State may, after consulting the President and such other persons as he considers appropriate, make rules (in this Part referred to as "Tribunal rules") with respect to proceedings before the Tribunal.

(2) Tribunal rules may make provision with respect to matters incidental to or consequential upon appeals provided for by or under any Act to the Court of Appeal or the Court of Session in relation to a decision of the Tribunal.

(3) Tribunal rules may—

(a) specify qualifications for appointment as Registrar;

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(b) confer functions on the President or the Registrar in relation to proceedings before the Tribunal; and

(c) contain incidental, supplemental, consequential or transitional provision.

(4) The power to make Tribunal rules is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Part 2 of Schedule 4 (which makes further provision about the rules) has effect, but without prejudice to the generality of subsection (1).

Modifications etc. (not altering text)

C4 S. 15 applied (1.5.2009 for specified purposes, 1.11.2009 in so far as not already in force) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(b)(c), **106** (with reg. 3)

16 Transfers of certain proceedings to and from Tribunal

(1) The Lord Chancellor may by regulations—

(a) make provision enabling the court—

(i) to transfer to the Tribunal for its determination so much of any proceedings before the court as relates to an infringement issue; and

(ii) to give effect to the determination of that issue by the Tribunal; and

(b) make such incidental, supplementary, consequential, transitional or saving provision as the Lord Chancellor may consider appropriate.

(2) The power to make regulations under subsection (1) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Rules of court may prescribe the procedure to be followed in connection with a transfer mentioned in subsection (1).

(4) The court may transfer to the Tribunal, in accordance with rules of court, so much of any proceedings before it as relates to a claim to which section 47A of the 1998 Act applies.

(5) Rules of court may make provision in connection with the transfer from the Tribunal to the High Court or the Court of Session of a claim made in proceedings under section 47A of the 1998 Act.

(6) In this section—

"the court" means—

(a) the High Court or a county court; or

(b) the Court of Session or a sheriff court; and

"infringement issue" means any question relating to whether or not an infringement of —

(a) the Chapter I prohibition or the Chapter II prohibition; or

(b) **[**[F3]Article 101 or 102**]** of the Treaty,

has been or is being committed;

but otherwise any terms used in this section and Part 1 of the 1998 Act have the same meaning as they have in that Part.

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Textual Amendments

F3 Words in s. 16(6) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

Proceedings under Part 1 of 1998 Act

17 Third party appeals

For section 47 of the 1998 Act (third party appeals) there is substituted—

"**47 Third party appeals**

(1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to a decision falling within paragraphs (a) to (f) of section 46(3) or such other decision of the OFT under this Part as may be prescribed.

(2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.

(3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates."

18 Monetary claims

(1) After section 47 of the 1998 Act there is inserted—

"**47A Monetary claims before Tribunal**

(1) This section applies to—

(a) any claim for damages, or3

(b) any other claim for a sum of money,

which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.

(2) In this section "relevant prohibition" means any of the following—

(a) the Chapter I prohibition;

(b) the Chapter II prohibition;

(c) the prohibition in Article 81(1) of the Treaty;

(d) the prohibition in Article 82 of the Treaty;

(e) the prohibition in Article 65(1) of the Treaty establishing the **[**[F4]European Union**]** ;

(f) the prohibition in Article 66(7) of that Treaty.

(3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.

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(4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.

(5) But no claim may be made in such proceedings—

(a) until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and

(b) otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.

(6) The decisions which may be relied on for the purposes of proceedings under this section are —

(a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;

(b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;

(c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;

(d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or

(e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the **[**[F4]European Union**]** has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.

(7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are—

(a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46, section 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);

(b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49 or under those Regulations;

(c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49 or under those Regulations;

(d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.

(8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—

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(a) the period during which proceedings against the decision or finding may be instituted in the European Court; and

(b) if any such proceedings are instituted, the period before those proceedings are determined.

(9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.

(10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim."

(2) Section 47A applies to claims arising before the commencement of this section as it applies to claims arising after that time.

Textual Amendments

F4 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

19 Claims on behalf of consumers

After section 47A of the 1998 Act (which is inserted by section 18), there is inserted—

"**47B Claims brought on behalf of consumers**

(1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.

(2) In this section "consumer claim" means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.

(3) A consumer claim may be included in proceedings under this section if it is—

(a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or

(b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;

and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.

(4) The consumer claims included in proceedings under this section must all relate to the same infringement.

(5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.

(6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the

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specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).

(7) This subsection applies to goods or services which—

(a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and

(b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.

(8) A business includes—

(a) a professional practice;

(b) any other undertaking carried on for gain or reward;

(c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.

(9) "Specified" means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.

(10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose."

Other amendments of 1998 Act

20 Findings of infringements

(1) After section 58 of the 1998 Act there is inserted—

"Findings of infringements

58A Findings of infringements

(1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of—

(a) the Chapter I prohibition;

(b) the Chapter II prohibition;

(c) the prohibition in Article 81(1) of the Treaty;

(d) the prohibition in Article 82 of the Treaty.

(2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.

(3) The decisions are—

(a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;

(b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;

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(c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed.

(4) The periods mentioned in subsection (2) are—

(a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46 or 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);

(b) in the case of a decision of the Tribunal mentioned in subsection (3)(c), the period during which a further appeal may be made under section 49 or under those Regulations;

(c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined."

(2) Section 58A does not apply in relation to decisions made before the commencement of this section.

(3) In section 59(1) of that Act (interpretation), in the definition of "the court", after "58" there is inserted " , 58A ".

21 Amendment of 1998 Act relating to the Tribunal

Schedule 5 (which contains amendments of the 1998 Act relating to, and to the proceedings of, the Tribunal) has effect.

PART 3

MERGERS

Modifications etc. (not altering text)

C5 Pt. 3 excluded in part (29.9.2008) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), arts. 1(2), **40**

C6 Pt. 3 modified (1.7.2012) by Health and Social Care Act 2012 (c. 7), **ss. 79**, 306(4); S.I. 2012/1319, art. 2(3)

C7 Pt. 3 applied (with modifications) (29.12.2004) by 1991 c. 56, Sch. 4ZA paras. 1, 2 (as inserted by Enterprise Act 2002 (c. 40), ss. 70(2), 279, **Sch. 6**); S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in arts. 3-5)
Pt. 3 (ss. 22-130) applied (1.10.2005) by 1991 c. 56, s. 17M(4) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
Pt. 3 applied (1.10.2005) by 1991 c. 56, s. 17Q(9) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
Pt. 3 applied in part (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(4)**, **27(9)**; S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

C8 Pt. 3 (ss. 22-130) modified (20.6.2003) by 1998 c. 41, Sch. 7 para. 20(3) (as substituted by Enterprise Act 2002 (c. 40), ss. 185, 279, {Sch. 11 para. 11(2)-(4)(8)}; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
Pt. 3 modified (E.W.) (29.12.2004) by The Water Mergers (Modification of Enactments) Regulations 2004 (S.I. 2004/3202), **regs. 2-35**

CHAPTER 1

DUTY TO MAKE REFERENCES

Duty to make references: completed mergers

22 Duty to make references in relation to completed mergers

(1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—

(a) a relevant merger situation has been created; and

(b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(2) The OFT may decide not to make a reference under this section if it believes that—

(a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission; or

(b) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

(3) No reference shall be made under this section if—

(a) the making of the reference is prevented by section [F5]. . . 74(1) or 96(3) or paragraph 4 of Schedule 7;

(b) the OFT is considering whether to accept undertakings under section 73 instead of making such a reference;

(c) the relevant merger situation concerned is being, or has been, dealt with in connection with a reference made under section 33;

(d) a notice under section 42(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the OFT under section 56(1); **[**[F6]or**]**

(e) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article **[**[F7]22(1) of the EC Merger Regulation**]** , is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request**[**[F8]; or

(f) subject to subsection (3A), a reasoned submission requesting referral to the European Commission has been submitted to the European Commission under article 4(5) of the EC Merger Regulation.**]**

[[F9](3A) Subsection (3)(f) shall cease to apply if the OFT is informed that a Member State competent to examine the concentration under its national competition law has,

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within the time permitted by Article 4(5) of the EC Merger Regulation, expressed its disagreement as regards the request to refer the case to the European Commission; and this subsection shall be construed in accordance with that Regulation.**]**

(4) A reference under this section shall, in particular, specify—

(a) the enactment under which it is made; and

(b) the date on which it is made.

(5) The references in this section to the creation of a relevant merger situation shall be construed in accordance with section 23, the reference in subsection (2) of this section to relevant customer benefits shall be construed in accordance with section 30 and the reference in subsection (3) of this section to a matter to which a notice under section 42(2) relates being finally determined under Chapter 2 shall be construed in accordance with section 43(4) and (5).

(6) In this Part "market in the United Kingdom" includes—

(a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and

(b) any market which operates only in a part of the United Kingdom;

and references to a market for goods or services include references to a market for goods and services.

(7) In this Part "the decision-making authority" means—

(a) in the case of a reference or possible reference under this section or section 33, the OFT or (as the case may be) the Commission; and

(b) in the case of a notice or possible notice under section 42(2) or 59(2) or a reference or possible reference under section 45 or 62, the OFT, the Commission or (as the case may be) the Secretary of State.

Textual Amendments

F5 Words in s. 22(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F6 Word in s. 22(3) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(2)(a)**

F7 Words in s. 22(3)(e) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(2)(b)**

F8 S. 22(3)(f) and preceding word inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(3)**

F9 S. 22(3A) inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(4)**

23 Relevant merger situations

(1) For the purposes of this Part, a relevant merger situation has been created if—

(a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and

(b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.

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(2) For the purposes of this Part, a relevant merger situation has also been created if—

(a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and

(b) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.

(3) The condition mentioned in this subsection is that, in relation to the supply of goods of any description, 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—

(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 enterprises concerned are carried on, or are supplied to those persons.

(4) The condition mentioned in this subsection is that, in relation to the supply of services of any description, 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—

(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 enterprises concerned are carried on, or supply for those persons.

(5) For the purpose of deciding whether the proportion of one-quarter mentioned in subsection (3) or (4) is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.

(6) References in subsections (3) and (4) to the supply of goods or (as the case may be) services shall, in relation to goods or services of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—

(a) as references to any of those forms of supply taken separately;

(b) as references to all those forms of supply taken together; or

(c) as references to any of those forms of supply taken in groups.

(7) For the purposes of subsection (6) the decision-making authority may treat goods or services as being the subject of different forms of supply whenever—

(a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and

(b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(8) The criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.

(9) For the purposes of this Chapter, the question whether a relevant merger situation has been created shall be determined as at—

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(a) in the case of a reference which is treated as having been made under section 22 by virtue of section 37(2), such time as the Commission may determine; and

(b) in any other case, immediately before the time when the reference has been, or is to be, made.

Modifications etc. (not altering text)

C9 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

24 Time-limits and prior notice

(1) For the purposes of section 23 two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within this section if—

(a) the two or more enterprises ceased to be distinct enterprises before the day on which the reference relating to them is to be made and did so not more than four months before that day; or

(b) notice of material facts about the arrangements or transactions under or in consequence of which the enterprises have ceased to be distinct enterprises has not been given in accordance with subsection (2).

(2) Notice of material facts is given in accordance with this subsection if—

(a) it is given to the OFT prior to the entering into of the arrangements or transactions concerned or the facts are made public prior to the entering into of those arrangements or transactions; or

(b) it is given to the OFT, or the facts are made public, more than four months before the day on which the reference is to be made.

(3) In this section—

"made public" means so publicised as to be generally known or readily ascertainable; and

"notice" includes notice which is not in writing.

Modifications etc. (not altering text)

C10 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

25 Extension of time-limits

(1) The OFT and the persons carrying on the enterprises which have or may have ceased to be distinct enterprises may agree to extend by no more than 20 days the four month period mentioned in section 24(1)(a) or (2)(b).

(2) The OFT may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if it considers that any of those persons has failed to provide, within the period stated in a notice under section 31 and in the manner authorised or required, information requested of him in that notice.

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(3) An extension under subsection (2) shall be for the period beginning with the end of the period within which the information is to be provided and which is stated in the notice under section 31 and ending with—

(a) the provision of the information to the satisfaction of the OFT; or

(b) if earlier, the cancellation by the OFT of the extension.

(4) The OFT may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if it is seeking undertakings from any of those persons under section 73.

(5) An extension under subsection (4) shall be for the period beginning with the receipt of the notice under that subsection and ending with the earliest of the following events—

(a) the giving of the undertakings concerned;

(b) the expiry of the period of 10 days beginning with the first day after the receipt by the OFT of a notice from the person who has been given a notice under subsection (4) and from whom the undertakings are being sought stating that he does not intend to give the undertakings; or

(c) the cancellation by the OFT of the extension.

(6) The OFT may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article **[**F10 22(1) of the EC Merger Regulation**]**(but is not yet proceeding with the matter in pursuance of such a request).

(7) An extension under subsection (6) shall be for the period beginning with the receipt of the notice under that subsection and ending with the receipt of a notice under subsection (8).

(8) The OFT shall, in connection with any notice given by it under subsection (6), by notice inform the persons carrying on the enterprises which have or may have ceased to be distinct enterprises of the completion by the European Commission of its consideration of the request of the United Kingdom.

(9) Subject to subsections (10) and (11), where the four month period mentioned in section 24(1)(a) or (2)(b) is extended or further extended by virtue of this section in relation to a particular case, any reference to that period in section 24 or the preceding provisions of this section shall have effect in relation to that case as if it were a reference to a period equivalent to the aggregate of the period being extended and the period of the extension (whether or not those periods overlap in time).

(10) Subsection (11) applies where—

(a) the four month period mentioned in section 24(1)(a) or (2)(b) is further extended;

(b) the further extension and at least one previous extension is made under one or more of subsections (2), (4) and (6); and

(c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(11) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (10)(c) shall be disregarded.

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(12) No more than one extension is possible under subsection (1).

Textual Amendments

F10 Words in s. 25(6) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(5)**

Modifications etc. (not altering text)

C11 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

26 Enterprises ceasing to be distinct enterprises

(1) For the purposes of this Part any two enterprises cease to be distinct enterprises if 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).

(2) Enterprises shall, in particular, be treated as being under common control if they are—

(a) enterprises of interconnected bodies corporate;

(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), be treated as having control of it.

(4) For the purposes of subsection (1), 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.

Modifications etc. (not altering text)

C12 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

27 Time when enterprises cease to be distinct

(1) Subsection (2) applies in relation to any arrangements or transaction—

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(a) not having immediate effect or having immediate effect only in part; but

(b) under or in consequence of which any two enterprises cease to be distinct enterprises.

(2) The time when the parties to any such 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 shall be taken to be the time at which the two enterprises cease to be distinct enterprises.

(3) In accordance with subsections (1) and (2) (but without prejudice to the generality of those subsections) 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.

(4) Subsections (1) to (3) are subject to subsections (5) to (8) and section 29.

(5) The decision-making authority may, for the purposes of a reference, treat successive events to which this subsection applies as having occurred simultaneously on the date on which the latest of them occurred.

(6) Subsection (5) applies to successive events—

(a) which occur within a period of two years under or in consequence of the same arrangements or transaction, or successive arrangements or transactions between the same parties or interests; and

(b) by virtue of each of which, under or in consequence of the arrangements or the transaction or transactions concerned, any enterprises cease as between themselves to be distinct enterprises.

(7) The decision-making authority may, for the purposes of subsections (5) and (6), treat such arrangements or transactions as the decision-making authority considers appropriate as arrangements or transactions between the same interests.

(8) In deciding whether it is appropriate to treat arrangements or transactions as arrangements or transactions between the same interests the decision-making authority shall, in particular, have regard to the persons substantially concerned in the arrangements or transactions concerned.

Modifications etc. (not altering text)

C13 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

C14 S. 27 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Anticipated Mergers) Order 2003 (S.I. 2003/1595), **art. 3**

28 Turnover test

(1) For the purposes of section 23 the value of the turnover in the United Kingdom of the enterprise being taken over shall be determined by taking the total value of the turnover in the United Kingdom of the enterprises which cease to be distinct enterprises and deducting—

(a) the turnover in the United Kingdom of any enterprise which continues to be carried on under the same ownership and control; or

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(b) if no enterprise continues to be carried on under the same ownership and control, the turnover in the United Kingdom which, of all the turnovers concerned, is the turnover of the highest value.

(2) For the purposes of this Part (other than section 121(4)(c)(ii)) the turnover in the United Kingdom of an enterprise shall be determined in accordance with such provisions as may be specified in an order made by the Secretary of State.

(3) An order under subsection (2) may, in particular, make provision as to—

(a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;

(b) the date or dates by reference to which an enterprise's turnover is to be determined;

(c) the connection with the United Kingdom by virtue of which an enterprise's turnover is turnover in the United Kingdom.

(4) An order under subsection (2) may, in particular, make provision enabling the decision-making authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (3)).

(5) The OFT shall—

(a) keep under review the sum for the time being mentioned in section 23(1)(b); and

(b) from time to time advise the Secretary of State as to whether the sum is still appropriate.

(6) The Secretary of State may by order amend section 23(1)(b) so as to alter the sum for the time being mentioned there.

Modifications etc. (not altering text)

C15 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

29 Obtaining control by stages

(1) Where an enterprise is brought under the control of a person or group of persons in the course of two or more transactions (in this section a "series of transactions") to which subsection (2) applies, those transactions may, if the decision-making authority considers it appropriate, be treated for the purposes of a reference as having occurred simultaneously on the date on which the latest of them occurred.

(2) This subsection applies to—

(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

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(b) any transaction by virtue of which 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.

(3) Where a series of transactions includes a transaction falling within subsection (2)(b), any transaction occurring after the occurrence of that transaction is to be disregarded for the purposes of subsection (1).

(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) are any of those transactions that occur within a period of two years.

(5) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of this section to determine—

(a) whether an enterprise is brought under the control of a person or group of persons; and

(b) whether a transaction is one to which subsection (2) applies;

as they apply for the purposes of section 26 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.

Modifications etc. (not altering text)

C16 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

C17 S. 29 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Anticipated Mergers) Order 2003 (S.I. 2003/1595), **art. 3**

30 Relevant customer benefits

(1) For the purposes of this Part a benefit is a relevant customer benefit if—

(a) it is a benefit to relevant customers in the form of—

(i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market or markets in which the substantial lessening of competition concerned has, or may have, occurred or (as the case may be) may occur); or

(ii) greater innovation in relation to such goods or services; and

(b) the decision-making authority believes—

(i) in the case of a reference or possible reference under section 22 or 45(2), as mentioned in subsection (2); and

(ii) in the case of a reference or possible reference under section 33 or 45(4), as mentioned in subsection (3).

(2) The belief, in the case of a reference or possible reference under section 22 or section 45(2), is that—

(a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and

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(b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

(3) The belief, in the case of a reference or possible reference under section 33 or 45(4), is that—

(a) the benefit may be expected to accrue within a reasonable period as a result of the creation of the relevant merger situation concerned; and

(b) the benefit is unlikely to accrue without the creation of that situation or a similar lessening of competition.

(4) In subsection (1) "relevant customers" means—

(a) customers of any person carrying on an enterprise which, in the creation of the relevant merger situation concerned, has ceased to be, or (as the case may be) will cease to be, a distinct enterprise;

(b) customers of such customers; and

(c) any other customers in a chain of customers beginning with the customers mentioned in paragraph (a);

and in this subsection "customers" includes future customers.

Modifications etc. (not altering text)

C18 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

31 Information powers in relation to completed mergers

(1) The OFT may by notice to any of the persons carrying on the enterprises which have or may have ceased to be distinct enterprises request him to provide the OFT with such information as the OFT may require for the purpose of deciding whether to make a reference under section 22.

(2) The notice shall state—

(a) the information required;

(b) the period within which the information is to be provided; and

(c) the possible consequences of not providing the information within the stated period and in the authorised or required manner.

Modifications etc. (not altering text)

C19 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

32 Supplementary provision for purposes of sections 25 and 31

(1) The Secretary of State may make regulations for the purposes of sections 25 and 31.

(2) The regulations may, in particular—

(a) provide for the manner in which any information requested by the OFT under section 31 is authorised or required to be provided, and the time at which such information is to be treated as provided (including the time at which it

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is to be treated as provided to the satisfaction of the OFT for the purposes of section 25(3));

(b) provide for the persons carrying on the enterprises which have or may have ceased to be distinct enterprises to be informed, in circumstances in which section 25(3) applies—

(i) of the fact that the OFT is satisfied as to the provision of the information requested by it or (as the case may be) of the OFT's decision to cancel the extension; and

(ii) of the time at which the OFT is to be treated as so satisfied or (as the case may be) of the time at which the cancellation is to be treated as having effect;

(c) provide for the persons carrying on the enterprises which have or may have ceased to be distinct enterprises to be informed, in circumstances in which section 25(5) applies—

(i) of the OFT's decision to cancel the extension; and

(ii) of the time at which the cancellation is to be treated as having effect;

(d) provide for the time at which any notice under section 25(4), (5)(b), (6) or (8) is to be treated as received;

(e) 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 carrying on an enterprise which has or may have ceased to be a distinct enterprise.

(3) A notice under section 25(2)—

(a) shall be given within 5 days of the end of the period within which the information is to be provided and which is stated in the notice under section 31; and

(b) shall inform the person to whom it is addressed of—

(i) the OFT's opinion as mentioned in section 25(2); and

(ii) the OFT's intention to extend the period for considering whether to make a reference.

(4) In determining for the purposes of section 25(1) or (5)(b) or subsection (3)(a) above any period which is expressed in the enactment concerned as a period of days or number of days 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.

Modifications etc. (not altering text)

C20 Ss. 23-32 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **art. 2**, Sch. 1

Duty to make references: anticipated mergers

33 Duty to make references in relation to anticipated mergers

(1) The OFT shall, subject to subsections (2) and (3), make a reference to the Commission if the OFT believes that it is or may be the case that—

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(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(2) The OFT may decide not to make a reference under this section if it believes that—

(a) the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference to the Commission;

(b) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Commission; or

(c) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition concerned and any adverse effects of the substantial lessening of competition concerned.

(3) No reference shall be made under this section if—

(a) the making of the reference is prevented by section F11. . . 74(1) or 96(3) or paragraph 4 of Schedule 7;

(b) the OFT is considering whether to accept undertakings under section 73 instead of making such a reference;

(c) the arrangements concerned are being, or have been, dealt with in connection with a reference made under section 22;

(d) a notice under section 42(2) is in force in relation to the matter or the matter to which such a notice relates has been finally determined under Chapter 2 otherwise than in circumstances in which a notice is then given to the OFT under section 56(1); **[**F12or**]**

(e) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article **[**F1322(1) of the EC Merger Regulation**]** , is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.**[**F14; or

(f) subject to subsection (3A), a reasoned submission requesting referral to the European Commission has been submitted to the European Commission under article 4(5) of the EC Merger Regulation.**]**

[F15(3A) Section 33(3)(f) shall cease to apply if the OFT is informed that a Member State competent to examine the concentration under its national competition law has, within the time permitted by Article 4(5) of the EC Merger Regulation, expressed its disagreement as regards the request to refer the case to the European Commission; and this subsection shall be construed in accordance with that Regulation.**]**

(4) A reference under this section shall, in particular, specify—

(a) the enactment under which it is made; and

(b) the date on which it is made.

Textual Amendments

F11 Words in s. 33(3)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

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F12 Word in s. 33(3) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(6)(a)**

F13 Words in s. 33(3)(e) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(6)(b)**

F14 S. 33(3)(f) and preceding word inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(7)**

F15 S. 33(3A) inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(8)**

34 Supplementary provision in relation to anticipated mergers

(1) The Secretary of State may by order make such provision as he considers appropriate about the operation of sections 27 and 29 in relation to—

(a) references under this Part which relate to arrangements which are in progress or in contemplation; or

(b) notices under section 42(2), 59(2) or 67(2) which relate to such arrangements.

(2) An order under subsection (1) may, in particular—

(a) provide for sections 27(5) to (8) and 29 to apply with modifications in relation to such references or notices or in relation to particular descriptions of such references or notices;

(b) enable particular descriptions of events, arrangements or transactions which have already occurred—

(i) to be taken into account for the purposes of deciding whether to make such references or such references of a particular description or whether to give such notices or such notices of a particular description;

(ii) to be dealt with under such references or such references of a particular description or under such notices or such notices of a particular description.

[F16 Cases referred by European Commission under EC Merger Regulation

Textual Amendments

F16 Ss. 34A, 34B and preceding cross-heading inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(9)**

34A Duty of OFT where case referred by the European Commission

(1) Subsection (2) applies if the European Commission has by a decision referred the whole or part of a case to the OFT under Article 4(4) or 9 of the EC Merger Regulation, or is deemed to have taken such a decision, unless an intervention notice is in force in relation to that case.

(2) Before the end of the preliminary assessment period, the OFT shall—

(a) decide whether to make a reference to the Commission under section 22 or 33; and

(b) inform the persons carrying on the enterprises concerned by notice of that decision and of the reasons for it.

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(3) The OFT may, for the purposes of subsection (2), decide not to make a reference on the basis that it is considering whether to seek or accept undertakings under section 73 instead of making a reference; but a decision taken on that basis does not prevent the OFT from making a reference under section 22 or 33 in the event of no such undertakings being offered or accepted.

(4) In this section—

"the preliminary assessment period" means, subject to subsection (5), the period of 45 working days beginning with the day after the day on which the decision of the European Commission to refer the case is taken (or is deemed to have been taken); and

"working day" means any day which is not—

(a) a Saturday;

(b) a Sunday; or

(c) a day which is a European Commission holiday (as published in the Official Journal of the **[**[F4]European Union**]** before the beginning of the year in which it occurs).

(5) If the OFT has imposed a requirement under section 34B and it considers that the person on whom that requirement was imposed has failed to comply with it, the OFT may, by notice to the persons carrying on the enterprises concerned, extend the preliminary assessment period.

(6) The period of an extension under subsection (5) shall—

(a) begin with the end of the period within which the requirement under section 34B could be complied with; and

(b) end with the earlier of either compliance with the requirement to the satisfaction of the OFT or cancellation by the OFT of the extension.

(7) A notice under subsection (6) shall—

(a) be given within 5 working days of the end of the period mentioned in paragraph (a) of that subsection; and

(b) inform the person to whom it is addressed that the OFT is of the opinion mentioned in subsection (5) and that it intends to extend the preliminary assessment period.

Textual Amendments

F4 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

34B Power to request information in referred cases

(1) In a case mentioned in section 34A(1), the OFT may by notice to any of the persons carrying on the enterprises concerned request him to provide the OFT with such information as the OFT may require for the purpose of making a decision for the purposes of section 34A(2).

(2) The notice shall state—

(a) the information required;

(b) the period within which the information is to be provided;

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(c) the manner (if any) in which the information is required to be provided; and

(d) the possible consequences—

(i) of not providing the information within the stated period; and

(ii) if a manner for its provision is stated in the notice, of not providing it in that manner.**]**

Determination of references

35 Questions to be decided in relation to completed mergers

(1) Subject to subsections (6) and (7) and section 127(3), the Commission shall, on a reference under section 22, decide the following questions—

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(2) For the purposes of this Part there is an anti-competitive outcome if—

(a) a relevant merger situation has been created and the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; or

(b) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation and the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(3) The Commission shall, if it has decided on a reference under section 22 that there is an anti-competitive outcome (within the meaning given by subsection (2)(a)), decide the following additional questions—

(a) whether action should be taken by it under section 41(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;

(b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(4) In deciding the questions mentioned in subsection (3) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(5) In deciding the questions mentioned in subsection (3) the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

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(6) In relation to the question whether a relevant merger situation has been created, a reference under section 22 may be framed so as to require the Commission to exclude from consideration—

(a) subsection (1) of section 23;

(b) subsection (2) of that section; or

(c) one of those subsections if the Commission finds that the other is satisfied.

(7) In relation to the question whether any such result as is mentioned in section 23(2)(b) has arisen, a reference under section 22 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

Modifications etc. (not altering text)

C21 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

36 Questions to be decided in relation to anticipated mergers

(1) Subject to subsections (5) and (6) and section 127(3), the Commission shall, on a reference under section 33, decide the following questions—

(a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

(2) The Commission shall, if it has decided on a reference under section 33 that there is an anti-competitive outcome (within the meaning given by section 35(2)(b)), decide the following additional questions—

(a) whether action should be taken by it under section 41(2) for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from the substantial lessening of competition;

(b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from the substantial lessening of competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(3) In deciding the questions mentioned in subsection (2) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(4) In deciding the questions mentioned in subsection (2) the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

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(5) In relation to the question whether a relevant merger situation will be created, a reference under section 33 may be framed so as to require the Commission to exclude from consideration—

(a) subsection (1) of section 23;

(b) subsection (2) of that section; or

(c) one of those subsections if the Commission finds that the other is satisfied.

(6) In relation to the question whether any such result as is mentioned in section 23(2)(b) will arise, a reference under section 33 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

Modifications etc. (not altering text)

C22 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

C23 S. 36(2)(a)(b) modified (20.6.2003) by The Enterprise Act 2002 (Anticipated Mergers) Order 2003 (S.I. 2003/1595), **art. 4**

37 Cancellation and variation of references under section 22 or 33

(1) The Commission shall cancel a reference under section 33 if it considers that the proposal to make arrangements of the kind mentioned in the reference has been abandoned.

(2) The Commission may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22; and, in such cases, references in this Part to references under those sections shall, so far as may be necessary, be construed accordingly.

(3) Where, by virtue of subsection (2), the Commission treats a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22, sections 77 to 81 shall, in particular, apply as if the reference had been made under section 33 or (as the case may be) 22 instead of under section 22 or 33.

(4) Subsection (5) applies in relation to any undertaking accepted under section 80, or any order made under section 81, which is in force immediately before the Commission, by virtue of subsection (2), treats a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22.

(5) The undertaking or order shall, so far as applicable, continue in force as if—

(a) in the case of an undertaking or order which relates to a reference made under section 22, accepted or made in relation to a reference made under section 33; and

(b) in the case of an undertaking or order which relates to a reference made under section 33, accepted or made in relation to a reference made under section 22;

and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.

(6) The OFT may at any time vary a reference under section 22 or 33.

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(7) The OFT shall consult the Commission before varying any such reference.

(8) Subsection (7) shall not apply if the Commission has requested the variation concerned.

(9) No variation by the OFT under this section shall be capable of altering the period permitted by section 39 within which the report of the Commission under section 38 is to be prepared and published.

38 Investigations and reports on references under section 22 or 33

(1) The Commission shall prepare and publish a report on a reference under section 22 or 33 within the period permitted by section 39.

(2) The report shall, in particular, contain—

(a) the decisions of the Commission on the questions which it is required to answer by virtue of section 35 or (as the case may be) 36;

(b) its reasons for its decisions; and

(c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

(4) The Commission shall, at the same time as a report prepared under this section is published, give it to the OFT.

39 Time-limits for investigations and reports

(1) The Commission shall prepare and publish its report under section 38 within the period of 24 weeks beginning with the date of the reference concerned.

(2) **[**[F17]Where article 9(6) of the European Merger Regulations applies in relation to the reference under section 22 or 33, the Commission shall prepare and publish its report under section 38—

(a) within the period of 24 weeks beginning with the date of the reference; or

(b) if it is a shorter period, within such period as is necessary to ensure compliance with that article.**]**

(3) The Commission may extend, by no more than 8 weeks, the period within which a report under section 38 is to be prepared and published if it considers that there are special reasons why the report cannot be prepared and published within that period.

(4) The Commission may extend the period within which a report under section 38 is to be prepared and published if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 109.

(5) In subsection (4) "relevant person" means—

(a) any person carrying on any of the enterprises concerned;

(b) any person who (whether alone or as a member of a group) owns or has control of any such person; or

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(c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(6) For the purposes of subsection (5) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(7) An extension under subsection (3) or (4) shall come into force when published under section 107.

(8) An extension under subsection (4) shall continue in force until—

(a) the person concerned provides the information or documents to the satisfaction of the Commission or (as the case may be) appears as a witness in accordance with the requirements of the Commission; or

(b) the Commission publishes its decision to cancel the extension.

(9) References in this Part to the date of a reference shall be construed as references to the date specified in the reference as the date on which it is made.

(10) This section is subject to section 40.

Textual Amendments

F17 S. 39(2) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(10)**

40 Section 39: supplementary

(1) **[**F18No extension is possible under subsection (3) or (4) of section 39 where the period within which the report is to be prepared and published is determined by virtue of subsection (2)(b) of that section.**]**

(2) **[**F18Where the period within which the report is to be prepared and published is determined by virtue of subsection (2)(a) of section 39, no extension is possible under subsection (3) or (4) of that section which extends that period beyond such period as is necessary to ensure compliance with article 9(6) of the European Merger Regulations.**]**

(3) A period extended under subsection (3) of section 39 may also be extended under subsection (4) of that section and a period extended under subsection (4) of that section may also be extended under subsection (3) of that section.

(4) No more than one extension is possible under section 39(3).

(5) Where a period within which a report under section 38 is to be prepared and published is extended or further extended under section 39(3) or (4), the period as extended or (as the case may be) further extended shall, subject to subsections (6) and (7), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(6) Subsection (7) applies where—

(a) the period within which the report under section 38 is to be prepared and published is further extended;

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(b) the further extension and at least one previous extension is made under section 39(4); and

(c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.

(8) The Secretary of State may by order amend section 39 so as to alter any one or more of the following periods—

(a) the period of 24 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;

(b) **[**F18the period of 24 weeks mentioned in subsection (2)(a) of that section or any period for the time being mentioned in that subsection in substitution for that period;**]**

(c) the period of 8 weeks mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period.

(9) No alteration shall be made by virtue of subsection (8) which results in the period for the time being mentioned in subsection (1) **[**F19or (2)(a)**]** of section 39 exceeding 24 weeks or the period for the time being mentioned in subsection (3) of that section exceeding 8 weeks.

(10) An order under subsection (8) shall not affect any period of time within which the Commission is under a duty to prepare and publish its report under section 38 in relation to a reference under section 22 or 33 if the Commission is already under that duty in relation to that reference when the order is made.

(11) Before making an order under subsection (8) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

(12) The Secretary of State may make regulations for the purposes of section 39(8).

(13) The regulations may, in particular—

(a) provide for the time at which information or documents are to be treated as provided (including the time at which they are to be treated as provided to the satisfaction of the Commission for the purposes of section 39(8));

(b) provide for the time at which a person is to be treated as appearing as a witness (including the time at which he is to be treated as appearing as a witness in accordance with the requirements of the Commission for the purposes of section 39(8));

(c) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 39(8) applies, of the fact that—

(i) the Commission is satisfied as to the provision of the information or documents required by it; or

(ii) the person concerned has appeared as a witness in accordance with the requirements of the Commission;

(d) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 39(8) applies, of the time at which the Commission is to be treated as satisfied as mentioned in paragraph (c)(i) above

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or the person concerned is to be treated as having appeared as mentioned in paragraph (c)(ii) above.

Textual Amendments

F18 S. 40(1)(2)(8)(b) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(11)(a)**

F19 Words in s. 40(9) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(11)(b)**

41 Duty to remedy effects of completed or anticipated mergers

(1) Subsection (2) applies where a report of the Commission has been prepared and published under section 38 within the period permitted by section 39 and contains the decision that there is an anti-competitive outcome.

(2) The Commission shall take such action under section 82 or 84 as it considers to be reasonable and practicable—

(a) to remedy, mitigate or prevent the substantial lessening of competition concerned; and

(b) to remedy, mitigate or prevent any adverse effects which have resulted from, or may be expected to result from, the substantial lessening of competition.

(3) The decision of the Commission under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 35(3) or (as the case may be) 36(2) unless there has been a material change of circumstances since the preparation of the report or the Commission otherwise has a special reason for deciding differently.

(4) In making a decision under subsection (2), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(5) In making a decision under subsection (2), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

CHAPTER 2

PUBLIC INTEREST CASES

Power to make references

42 Intervention by Secretary of State in certain public interest cases

(1) Subsection (2) applies where—

(a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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) no reference under section 22 or 33 has been made in relation to the relevant merger situation concerned;

(c) no decision has been made not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33 or a decision to accept undertakings under section 73 instead of making such a reference); and

(d) no reference is prevented from being made under section 22 or 33 by virtue of—

(i) section 22(3)(a) or (e) or (as the case may be) 33(3)(a) or (e); or

(ii) **[**[F20]EU**]** law or anything done under or in accordance with it.

(2) The Secretary of State may give a notice to the OFT (in this Part "an intervention notice") if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.

(3) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 58 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.

(4) No more than one intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.

(5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

(6) In their application by virtue of subsection (5) sections 23 to 32 shall have effect as if—

(a) for paragraph (a) of section 23(9) there were substituted—

"(a) in relation to the giving of an intervention notice, the time when the notice is given;

(aa) in relation to the making of a report by the OFT under section 44, the time of the making of the report;

(ab) in the case of a reference which is treated as having been made under section 45(2) or (3) by virtue of section 49(1), such time as the Commission may determine; and";

(b) the references to the OFT in sections 25(1) to (3), (6) and (8) and 31 included references to the Secretary of State;

(c) the references to the OFT in section 25(4) and (5) were references to the Secretary of State;

(d) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;

(e) after section 25(5) there were inserted—

"(5A) The Secretary of State may by notice to the persons carrying on the enterprises which have or may have ceased to be distinct enterprises extend the four month period mentioned in section 24(1)(a) or (2)(b) if, by virtue of section 46(5) or paragraph 3(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 45.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(5B) An extension under subsection (5A) shall be for the period of the delay.";

(f) in section 25(10)(b) after the word "(4)" there were inserted " , (5A) ";

(g) the reference in section 25(12) to one extension were a reference to one extension by the OFT and one extension by the Secretary of State;

(h) the powers to extend time-limits under section 25 as applied by subsection (5) above, and the power to request information under section 31(1) as so applied, were not exercisable by the OFT or the Secretary of State before the giving of an intervention notice but the existing time-limits in relation to possible references under section 22 or 33 were applicable for the purposes of the giving of that notice;

(i) the existing time-limits in relation to possible references under section 22 or 33 (except for extensions under section 25(4)) remained applicable on and after the giving of an intervention notice as if any extensions were made under section 25 as applied by subsection (5) above but subject to further alteration by the OFT or the Secretary of State under section 25 as so applied;

(j) in subsection (1) of section 31 for the words "section 22" there were substituted " section 45(2) or (3) " and, in the application of that subsection to the OFT, for the word "deciding" there were substituted " enabling the Secretary of State to decide ";

(k) in the case of the giving of intervention notices, the references in sections 23 to 32 to the making of a reference or a reference were, so far as necessary, references to the giving of an intervention notice or an intervention notice; and

(l) the references to the OFT in section 32(2)(a) to (c) and (3) were construed in accordance with the above modifications.

(7) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

(8) For the purposes of this Part a public interest consideration is finalised if—

(a) it is specified in section 58 otherwise than by virtue of an order under subsection (3) of that section; or

(b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (7) of section 124 and within the period mentioned in that subsection.

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

43 Intervention notices under section 42

(1) An intervention notice shall state—

(a) the relevant merger situation concerned;

(b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and

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(c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) An intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

(4) For the purposes of this Part, a matter to which an intervention notice relates is finally determined under this Chapter if—

(a) the time within which the OFT **[**F21or (if relevant) OFCOM**]** is to report to the Secretary of State under section 44 **[**F22or (as the case may be) 44A**]** has expired and no such report has been made;

(b) the Secretary of State decides to accept an undertaking or group of undertakings under paragraph 3 of Schedule 7 instead of making a reference under section 45;

(c) the Secretary of State otherwise decides not to make a reference under that section;

(d) the Commission cancels such a reference under section 48(1) or 53(1);

(e) the time within which the Commission is to prepare a report under section 50 and give it to the Secretary of State has expired and no such report has been prepared and given to the Secretary of State;

(f) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;

(g) the Secretary of State decides under section 54(2) to make no finding at all in the matter;

(h) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;

(i) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; or

(j) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of Schedule 7 or makes an order under paragraph 11 of that Schedule.

(5) For the purposes of this Part the time when a matter to which an intervention notice relates is finally determined under this Chapter is—

(a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;

(b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;

(c) in a case falling within subsection (4)(c), (d), (g) or (h), the making of the decision concerned;

(d) in a case falling within subsection (4)(i), the making of the decision neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; and

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(e) in a case falling within subsection (4)(j), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

[F23(6) In this Part "OFCOM" means the Office of Communications.**]**

Textual Amendments

F21 Words in s. 43(4)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 8(2)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F22 Words in s. 43(4)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 8(2)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F23 S. 43(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 8(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

44 Investigation and report by OFT

(1) Subsection (2) applies where the Secretary of State has given an intervention notice in relation to a relevant merger situation.

(2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.

(3) The report shall contain—

(a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 45; and

(b) a summary of any representations about the case which have been received by the OFT and which relate to any public interest consideration mentioned in the intervention notice concerned **[**F24(other than a media public interest consideration)**]** and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.

(4) The report shall, in particular, include decisions as to whether the OFT believes that it is, or may be, the case that—

(a) a relevant merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) the market or markets concerned would not be of sufficient importance to justify the making of a reference to the Commission under section 22 or 33;

(d) in the case of arrangements which are in progress or in contemplation, the arrangements are not sufficiently far advanced, or not sufficiently likely to proceed, to justify the making of such a reference;

(e) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the substantial lessening of competition and any adverse effects of the substantial lessening of competition; or

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(f) it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7.

(5) If the OFT believes that it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings under paragraph 3 of Schedule 7, the report shall contain descriptions of the undertakings which the OFT believes are, or may be, appropriate.

[[F25](5A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.**]**

(6) The report may, in particular, include advice and recommendations on any public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45.

(7) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

[[F26](8) In this Part "media public interest consideration" means any consideration which, at the time of the giving of the intervention notice concerned—

(a) is specified in section 58(2A) to (2C); or

(b) in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in section 58.

(9) In this Part "broadcasting" means the provision of services the provision of which—

(a) is required to be licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996; or

(b) would be required to be so licensed if provided by a person subject to licensing under the Part in question.

(10) In this Part "newspaper" means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom.

(11) The Secretary of State may by order amend subsections (9) and (10).**]**

Textual Amendments

F24 Words in s. 44(3)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 376(1)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F25 S. 44(5A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 376(2)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F26 S. 44(8)-(11) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 376(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

[[F27]44A Additional investigation and report by OFCOM: media mergers

(1) Subsection (2) applies where—

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(a) the Secretary of State has given an intervention notice in relation to a relevant merger situation; and

(b) the intervention notice mentions any media public interest consideration.

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

(a) advice and recommendations on any media public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 45; and

(b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.

(4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.**]**

Textual Amendments

F27 S. 44A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 377**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

45 Power of Secretary of State to refer matter to Commission

(1) Subsections (2) to (5) apply where the Secretary of State—

(a) has given an intervention notice in relation to a relevant merger situation; and

(b) has received a report of the OFT under section 44 **[**[F28], and any report of OFCOM which is required by virtue of section 44A,**]** in relation to the matter.

(2) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) a relevant merger situation has been created;

(b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) a relevant merger situation has been created;

(b) the creation of that situation has not resulted, and may be expected not to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

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(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.

(5) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) the creation of that situation may be expected not to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the relevant public interest consideration or considerations concerned, the creation of the relevant merger situation may be expected to operate against the public interest.

(6) For the purposes of this Chapter any anti-competitive outcome shall be treated as being adverse to the public interest unless it is justified by one or more than one public interest consideration which is relevant.

(7) This section is subject to section 46.

Textual Amendments

F28 Words in s. 45(1)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 9** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

46 References under section 45: supplementary

(1) No reference shall be made under section 45 if—

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(a) the making of the reference is prevented by section F29. . . 74(1) or 96(3) or paragraph 4 of Schedule 7; **[**F30or**]**

(b) the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article **[**F3122(1) of the EC Merger Regulation**]** , is proceeding with the matter in pursuance of such a request or has dealt with the matter in pursuance of such a request.**[**F32; or

(c) subject to subsection (1A), a reasoned submission requesting referral to the European Commission has been submitted to the European Commission under article 4(5) of the EC Merger Regulation.**]**

[F33(1A) Subsection (1)(c) shall cease to apply if the Secretary of State is informed that a Member State competent to examine the concentration under its national competition law has, within the time permitted by Article 4(5) of the EC Merger Regulation, expressed its disagreement as regards the request to refer the case to the European Commission; and this subsection shall be construed in accordance with that Regulation.**]**

(2) The Secretary of State, in deciding whether to make a reference under section 45, shall accept the decisions of the OFT included in its report by virtue of subsection (4) of section 44 and any descriptions of undertakings as mentioned in subsection (5) of that section.

(3) Where the decision to make a reference under section 45 is made at any time on or after the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised before the end of that period.

(4) Subject to subsection (5), where the decision to make a reference under section 45(2) or (4) is made at any time before the end of the period of 24 weeks beginning with the giving of the intervention notice concerned, the Secretary of State shall, in deciding whether to make such a reference, disregard any public interest consideration which is mentioned in the intervention notice but which has not been finalised if its effect would be to prevent, or to help to prevent, an anti-competitive outcome from being adverse to the public interest.

(5) The Secretary of State may, if he believes that there is a realistic prospect of the public interest consideration mentioned in subsection (4) being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned, delay deciding whether to make the reference concerned until the public interest consideration is finalised or, if earlier, the period expires.

(6) A reference under section 45 shall, in particular, specify—

(a) the subsection of that section under which it is made;

(b) the date on which it is made; and

(c) the public interest consideration or considerations mentioned in the intervention notice concerned which the Secretary of State is not under a duty to disregard by virtue of subsection (3) above and which he believes are or may be relevant to a consideration of the relevant merger situation concerned.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Textual Amendments

F29 Words in s. 46(1)(a) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note. 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F30 Word in s. 46(1) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(12)(a)**

F31 Words in s. 46(1)(b) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(12)(b)**

F32 S. 46(1)(c) and preceding word inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(13)**

F33 S. 46(1A) inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(14)**

I[F34] Cases referred by European Commission under the EC Merger Regulation

Textual Amendments

F34 Ss. 46A-46C and cross-heading inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(15)**

46A Cases referred by the European Commission where intervention notice is in force

(1) Subsection (2) applies if the European Commission has by a decision referred the whole or part of a case to the OFT under Article 4(4) or 9 of the EC Merger Regulation, or is deemed to have taken such a decision, and an intervention notice is in force in relation to that case.

(2) Before the end of the preliminary assessment period, the Secretary of State shall—

(a) decide whether to make a reference to the Commission under section 45; and

(b) inform the persons carrying on the enterprises concerned by notice of that decision and of the reasons for it.

(3) The Secretary of State may, for the purposes of subsection (2), decide not to make a reference on the basis that he is considering whether to seek or accept undertakings under paragraph 3 of Schedule 7 instead of making a reference; but a decision taken on that basis does not prevent the Secretary of State from making a reference under section 45 in the event of no such undertakings being offered or accepted.

(4) In this section—

"the preliminary assessment period" means, subject to section 46B, the period of 45 working days beginning with the day after the day on which the decision of the European Commission to refer the case is taken (or is deemed to have been taken); and

"working day" means any day which is not—

(a) a Saturday;

(b) a Sunday; or

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(c) a day which is a European Commission holiday (as published in the Official Journal of the **[**F4European Union**]** before the beginning of the year in which it occurs).

Textual Amendments

F4 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

46B Extension of preliminary assessment period

(1) If the OFT has imposed a requirement under section 46C and it considers that the person on whom that requirement was imposed has failed to comply with it, the OFT may, by notice to the persons carrying on the enterprises concerned, extend the preliminary assessment period.

(2) If the Secretary of State has imposed a requirement under section 46C and he considers that the person on whom that requirement was imposed has failed to comply with it, he may, by notice to the persons carrying on the enterprises concerned, extend the preliminary assessment period.

(3) The period of an extension under this section shall—

(a) begin with the end of the period within which the requirement under section 46C could be complied with; and

(b) end with—

(i) in the case of a notice under subsection (1), the earlier of either compliance with the requirement to the satisfaction of the OFT or cancellation by the OFT of the extension.

(ii) in the case of a notice under subsection (2), the earlier of either compliance with the requirement to the satisfaction of the Secretary of State or cancellation by him of the extension.

(4) A notice under this section shall—

(a) be given within 5 working days of the end of the period mentioned in subsection (3)(a); and

(b) inform the person to whom it is addressed—

(i) in the case of a notice under subsection (1), that the OFT is of the opinion mentioned in that subsection and that it intends to extend the preliminary assessment period.

(ii) in the case of a notice under subsection (2), that the Secretary of State is of the opinion mentioned in that subsection and that he intends to extend the preliminary assessment period.

46C Power to request information in referred cases

(1) In a case mentioned in section 46A(1), the OFT may by notice to any of the persons carrying on the enterprises concerned request him to provide the OFT with such information as the OFT may require for the purpose of enabling the Secretary of State to make a decision for the purposes of section 46A(2).

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(2) In such a case, the Secretary of State may by notice to any of the persons carrying on the enterprises concerned request him to provide the Secretary of State with such information as he may require for the purpose of enabling him to make a decision for the purposes of section 46A(2).

(3) A notice under subsection (1) or (2) shall state—

(a) the information required;

(b) the period within which the information is to be provided; and

(c) the manner (if any) in which the information is required to be provided; and

(d) the possible consequences—

(i) of not providing the information within the stated period; and

(ii) if a manner for its provision is stated in the notice, of not providing it in that manner.**]**

Reports on references

47 Questions to be decided on references under section 45

(1) The Commission shall, on a reference under section 45(2) or (3), decide whether a relevant merger situation has been created.

(2) If the Commission decides that such a situation has been created, it shall, on a reference under section 45(2), decide the following additional questions—

(a) whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; and

(b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) If the Commission decides that a relevant merger situation has been created, it shall, on a reference under section 45(3), decide whether, taking account only of the admissible public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Commission shall, on a reference under section 45(4) or (5), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

(5) If the Commission decides that such arrangements are in progress or in contemplation, it shall, on a reference under section 45(4), decide the following additional questions—

(a) whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services; and

(b) whether, taking account only of any substantial lessening of competition and the admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(6) If the Commission decides that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it shall, on a reference under section 45(5), decide whether, taking account only of the

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admissible public interest consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(7) The Commission shall, if it has decided on a reference under section 45 that the creation of a relevant merger situation operates or may be expected to operate against the public interest, decide the following additional questions—

(a) whether action should be taken by the Secretary of State under section 55 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation;

(b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(8) Where the Commission has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, it shall also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 56(6))—

(a) whether action should be taken by it under section 41 for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition;

(b) whether the Commission should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has resulted from, or may be expected to result from, the substantial lessening of competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(9) In deciding the questions mentioned in subsections (7) and (8) the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to—

(a) the adverse effects to the public interest; or

(b) (as the case may be) the substantial lessening of competition and any adverse effects resulting from it.

(10) In deciding the questions mentioned in subsections (7) and (8) in a case where it has decided by virtue of subsection (2)(a) or (5)(a) that there is or will be a substantial lessening of competition, the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(11) In this section "admissible public interest consideration" means any public interest consideration which is specified in the reference under section 45 and which the Commission is not under a duty to disregard.

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Modifications etc. (not altering text)

C24 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

48 Cases where references or certain questions need not be decided

(1) The Commission shall cancel a reference under section 45(4) or (5) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.

(2) In relation to the question whether a relevant merger situation has been created or the question whether a relevant merger situation will be created, a reference under section 45 may be framed so as to require the Commission to exclude from consideration—

(a) subsection (1) of section 23;

(b) subsection (2) of that section; or

(c) one of those subsections if the Commission finds that the other is satisfied.

(3) In relation to the question whether any such result as is mentioned in section 23(2)(b) has arisen or the question whether any such result will arise, a reference under section 45 may be framed so as to require the Commission to confine its investigation to the supply of goods or services in a part of the United Kingdom specified in the reference.

49 Variation of references under section 45

(1) The Commission may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat—

(a) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or

(b) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;

and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.

(2) Where, by virtue of subsection (1), the Commission treats a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section, paragraphs 1, 2, 7 and 8 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (4) or (as the case may be) (5) of that section instead of under subsection (2) or (3) of that section.

(3) Where, by virtue of subsection (1), the Commission treats a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section, paragraphs 1, 2, 7 and 8 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (2) or (as the case may be) (3) of that section instead of under subsection (4) or (5) of that section.

(4) Subsection (5) applies in relation to any undertaking accepted under paragraph 1 of Schedule 7, or any order made under paragraph 2 of that Schedule, which is in force

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immediately before the Commission, by virtue of subsection (1), treats a reference as mentioned in subsection (1).

(5) The undertaking or order shall, so far as applicable, continue in force as if—

(a) in the case of an undertaking or order which relates to a reference under subsection (2) or (3) of section 45, accepted or made in relation to a reference made under subsection (4) or (as the case may be) (5) of that section; and

(b) in the case of an undertaking or order which relates to a reference made under subsection (4) or (5) of that section, accepted or made in relation to a reference made under subsection (2) or (as the case may be) (3) of that section;

and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.

(6) The Secretary of State may at any time vary a reference under section 45.

(7) The Secretary of State shall consult the Commission before varying any such reference.

(8) Subsection (7) shall not apply if the Commission has requested the variation concerned.

(9) No variation by the Secretary of State under this section shall be capable of altering the public interest consideration or considerations specified in the reference or the period permitted by section 51 within which the report of the Commission under section 50 is to be prepared and given to the Secretary of State.

50 Investigations and reports on references under section 45

(1) The Commission shall prepare a report on a reference under section 45 and give it to the Secretary of State within the period permitted by section 51.

(2) The report shall, in particular, contain—

(a) the decisions of the Commission on the questions which it is required to answer by virtue of section 47;

(b) its reasons for its decisions; and

(c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

[F35(2A) Where the report relates to a reference under section 45 which has been made after a report of OFCOM under section 44A, the Commission shall give a copy of its report (whether or not published) to OFCOM.**]**

(3) The Commission shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

Textual Amendments

F35 S. 50(2A) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 10** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

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51 Time-limits for investigations and reports by Commission

(1) The Commission shall prepare its report under section 50 and give it to the Secretary of State under that section within the period of 24 weeks beginning with the date of the reference concerned.

(2) **[**[F36]Where article 9(6) of the European Merger Regulations applies in relation to the reference under section 45, the Commission shall prepare its report under section 50 and give it to the Secretary of State—

(a) within the period of 24 weeks beginning with the date of the reference; or

(b) if it is a shorter period, within such period as is necessary to ensure compliance with that article.**]**

(3) The Commission may extend, by no more than 8 weeks, the period within which a report under section 50 is to be prepared and given to the Secretary of State if it considers that there are special reasons why the report cannot be prepared and given to the Secretary of State within that period.

(4) The Commission may extend the period within which a report under section 50 is to be prepared and given to the Secretary of State if it considers that a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 109.

(5) In subsection (4) "relevant person" means—

(a) any person carrying on any of the enterprises concerned;

(b) any person who (whether alone or as a member of a group) owns or has control of any such person; or

(c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).

(6) For the purposes of subsection (5) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

(7) An extension under subsection (3) or (4) shall come into force when published under section 107.

(8) An extension under subsection (4) shall continue in force until—

(a) the person concerned provides the information or documents to the satisfaction of the Commission or (as the case may be) appears as a witness in accordance with the requirements of the Commission; or

(b) the Commission publishes its decision to cancel the extension.

(9) This section is subject to sections 52 and 53.

Textual Amendments

F36 S. 51(2) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(16)**

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52 Section 51: supplementary

(1) **[**F37No extension is possible under subsection (3) or (4) of section 51 where the period within which the report is to be prepared and given to the Secretary of State is determined by virtue of subsection (2)(b) of that section.**]**

(2) **[**F37Where the period within which the report is to be prepared and given to the Secretary of State is determined by virtue of subsection (2)(a) of section 51, no extension is possible under subsection (3) or (4) of that section which extends that period beyond such period as is necessary to ensure compliance with article 9(6) of the European Merger Regulations.**]**

(3) A period extended under subsection (3) of section 51 may also be extended under subsection (4) of that section and a period extended under subsection (4) of that section may also be extended under subsection (3) of that section.

(4) No more than one extension is possible under section 51(3).

(5) Where a period within which a report under section 50 is to be prepared and given to the Secretary of State is extended or further extended under section 51(3) or (4), the period as extended or (as the case may be) further extended shall, subject to subsections (6) and (7), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(6) Subsection (7) applies where—

(a) the period within which the report under section 50 is to be prepared and given to the Secretary of State is further extended;

(b) the further extension and at least one previous extension is made under section 51(4); and

(c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.

(8) The Secretary of State may by order amend section 51 so as to alter any one or more of the following periods—

(a) the period of 24 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;

(b) **[**F37the period of 24 weeks mentioned in subsection (2)(a) of that section or any period for the time being mentioned in that subsection in substitution for that period;**]**

(c) the period of 8 weeks mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period.

(9) No alteration shall be made by virtue of subsection (8) which results in the period for the time being mentioned in subsection (1) **[**F38or (2)(a)**]** of section 51 exceeding 24 weeks or the period for the time being mentioned in subsection (3) of that section exceeding 8 weeks.

(10) An order under subsection (8) shall not affect any period of time within which the Commission is under a duty to prepare and give to the Secretary of State its report under section 50 in relation to a reference under section 45 if the Commission is already under that duty in relation to that reference when the order is made.

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(11) Before making an order under subsection (8) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

(12) The Secretary of State may make regulations for the purposes of section 51(8).

(13) The regulations may, in particular—

(a) provide for the time at which information or documents are to be treated as provided (including the time at which they are to be treated as provided to the satisfaction of the Commission for the purposes of section 51(8));

(b) provide for the time at which a person is to be treated as appearing as a witness (including the time at which he is to be treated as appearing as a witness in accordance with the requirements of the Commission for the purposes of section 51(8));

(c) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 51(8) applies, of the fact that—

(i) the Commission is satisfied as to the provision of the information or documents required by it; or

(ii) the person concerned has appeared as a witness in accordance with the requirements of the Commission;

(d) provide for the persons carrying on the enterprises which have or may have ceased to be, or may cease to be, distinct enterprises to be informed, in circumstances in which section 51(8) applies, of the time at which the Commission is to be treated as satisfied as mentioned in paragraph (c)(i) above or the person concerned is to be treated as having appeared as mentioned in paragraph (c)(ii) above.

Textual Amendments

F37 S. 52(1)(2)(8)(b) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(17)(a)**

F38 Words in s. 52(9) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(17)(b)**

53 Restrictions on action where public interest considerations not finalised

(1) The Commission shall cancel a reference under section 45 if—

(a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;

(b) no other public interest consideration is mentioned in the notice;

(c) at least 24 weeks has elapsed since the giving of the notice; and

(d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.

(2) Where a reference to the Commission under section 45 specifies a public interest consideration which has not been finalised before the making of the reference, the

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Commission shall not give its report to the Secretary of State under section 50 in relation to that reference unless—

(a) the period of 24 weeks beginning with the giving of the intervention notice concerned has expired; **[**F39or**]**

(b) the public interest consideration concerned has been finalised; **[**F40or**]**

(c) **[**F41the report must be given to the Secretary of State to ensure compliance with article 9(6) of the European Merger Regulations.**]**

(3) The Commission shall, in reporting on any of the questions mentioned in section 47(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which has not been finalised before the giving of the report.

(4) The Commission shall, in reporting on any of the questions mentioned in section 47(2)(b), (3), (5)(b), (6) and (7), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.

(5) Subsections (1) to (4) are without prejudice to the power of the Commission to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

Textual Amendments

F39 Word in s. 53(2) inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(18)(a)**

F40 Word in s. 53(2) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(18)(b)**

F41 S. 53(2)(c) ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(18)(c)**

Decisions of the Secretary of State

54 Decision of Secretary of State in public interest cases

(1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 50 in relation to a relevant merger situation.

(2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the relevant merger situation and whether to make no finding at all in the matter.

(3) For the purposes of this Part the Secretary of State makes an adverse public interest finding in relation to a relevant merger situation if, in relation to that situation, he decides—

(a) in connection with a reference to the Commission under subsection (2) of section 45, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (3) of that section;

(b) in connection with a reference to the Commission under subsection (3) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection;

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(c) in connection with a reference to the Commission under subsection (4) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection or subsection (5) of that section; and

(d) in connection with a reference to the Commission under subsection (5) of that section, that it is the case as mentioned in paragraphs (a) to (d) of that subsection.

(4) The Secretary of State may make no finding at all in the matter only if he decides that there is no public interest consideration which is relevant to a consideration of the relevant merger situation concerned.

(5) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the Commission under section 50.

(6) In making a decision under subsections (2) to (4), the Secretary of State shall disregard any public interest consideration not specified in the reference under section 45 and any public interest consideration disregarded by the Commission for the purposes of its report.

(7) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept—

(a) in connection with a reference to the Commission under section 45(2) or (4), the decision of the report of the Commission under section 50 as to whether there is an anti-competitive outcome; and

(b) in connection with a reference to the Commission under section 45(3) or (5)—

(i) the decision of the report of the Commission under section 50 as to whether a relevant merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(ii) the decision of the report of the OFT under section 44 as to the absence of a substantial lessening of competition.

(8) In determining for the purposes of subsection (5) the period of 30 days 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.

55 Enforcement action by Secretary of State

(1) Subsection (2) applies where the Secretary of State has decided under subsection (2) of section 54 within the period required by subsection (5) of that section to make an adverse public interest finding in relation to a relevant merger situation and has published his decision within the period so required.

(2) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation concerned.

(3) In making a decision under subsection (2) the Secretary of State shall, in particular, have regard to the report of the Commission under section 50.

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(4) In making a decision under subsection (2) in any case of a substantial lessening of competition, the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

Other

56 Competition cases where intervention on public interest grounds ceases

(1) Where the Secretary of State decides not to make a reference under section 45 on the ground that no public interest consideration to which he is able to have regard is relevant to a consideration of the relevant merger situation concerned, he shall by notice require the OFT to deal with the matter otherwise than under this Chapter.

(2) Where a notice is given to the OFT in the circumstances mentioned in subsection (1), the OFT shall decide whether to make a reference under section 22 or 33; and any time-limits in relation to the Secretary of State's decision whether to make a reference under section 45 (including any remaining powers of extension) shall apply in relation to the decision of the OFT whether to make a reference under section 22 or 33.

(3) Where the Commission cancels under section 53(1) a reference under section 45 and the report of the OFT under section 44 contains the decision that it is or may be the case that there is an anti-competitive outcome in relation to the relevant merger situation concerned, the Commission shall proceed under this Part as if a reference under section 22 or (as the case may be) 33 had been made to it by the OFT.

(4) In proceeding by virtue of subsection (3) to prepare and publish a report under section 38, the Commission shall proceed as if—

(a) the reference under section 22 or 33 had been made at the same time as the reference under section 45;

(b) the timetable for preparing and giving its report under section 50 (including any remaining powers of extension and as extended by an additional period of 20 days) were the timetable for preparing and publishing its report under section 38; and

(c) in relation to the question whether a relevant merger situation has been created or the question whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, the Commission were confined to the questions on the subject to be investigated by it under section 47.

(5) In determining the period of 20 days mentioned in subsection (4) 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.

(6) Where the Secretary of State decides under section 54(2) to make no finding at all in the matter in connection with a reference under section 45(2) or (4), the Commission shall proceed under this Part as if a reference under section 22 or (as the case may be) 33 had been made to it instead of a reference under section 45 and as if its report to the Secretary of State under section 50 had been prepared and published by it under section 38 within the period permitted by section 39.

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(7) In relation to proceedings by virtue of subsection (6), the reference in section 41(3) to decisions of the Commission as included in its report by virtue of section 35(3) or 36(2) shall be construed as a reference to decisions which were included in the report of the Commission by virtue of section 47(8).

(8) Where the Commission becomes under a duty to proceed as mentioned in subsection (3) or (6), references in this Part to references under sections 22 and 33 shall, so far as may be necessary, be construed accordingly; and, in particular, sections 77 to 81 shall apply as if a reference has been made to the Commission by the OFT under section 22 or (as the case may be) 33.

57 Duties of OFT and Commission to inform Secretary of State

(1) The OFT shall, in considering whether to make a reference under section 22 or 33, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 58 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.

(2) The OFT **[**[F42], OFCOM**]** and the Commission shall bring to the attention of the Secretary of State any representations about exercising his powers under section 58(3) which have been made to the OFT **[**[F42], OFCOM**]** or (as the case may be) the Commission.

Textual Amendments

F42 Words in s. 57(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 11** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

58 Specified considerations

(1) The interests of national security are specified in this section.

(2) In subsection (1) "national security" includes public security; and in this subsection "public security" has the same meaning as in article **[**[F43]21(4) of the EC Merger Regulation**]** .

[[F44](2A) The need for—

(a) accurate presentation of news; and

(b) free expression of opinion;

in newspapers is specified in this section.

(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom is specified in this section.

(2C) The following are specified in this section—

(a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

(c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.**]**

[F45(2D) The interest of maintaining the stability of the UK financial system is specified in this section (other than for the purposes of sections 67 and 68 or references made, or deemed to be made, by the European Commission to the OFT under article 4(4) or 9 of the EC Merger Regulation).**]**

(3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.

(4) An order under this section may, in particular—

(a) provide for a consideration to be specified in this section for a particular purpose or purposes or for all purposes;

(b) apply in relation to cases under consideration by the OFT, **[**F46OFCOM,**]** the Commission or the Secretary of State before the making of the order as well as cases under consideration on or after the making of the order.

Textual Amendments

F43 Words in s. 58(2) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(19)**

F44 S. 58(2A)-(2C) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 375(1)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F45 S. 58(2D) inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 (S.I. 2008/2645), arts. 1(1), **2**

F46 Word in s. 58(4)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 12** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

[F47**58A Construction of consideration specified in section 58(2C)**

(1) For the purposes of section 58 and this section an enterprise is a media enterprise if it consists in or involves broadcasting.

(2) In the case of a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting, the references in section 58(2C)(a) or this section to media enterprises include references to newspaper enterprises.

(3) In this Part "newspaper enterprise" means an enterprise consisting in or involving the supply of newspapers.

(4) Wherever in a merger situation two media enterprises serving the same audience cease to be distinct, the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards.

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(5) For the purposes of section 58, where two or more media enterprises—

(a) would fall to be treated as under common ownership or common control for the purposes of section 26, or

(b) are otherwise in the same ownership or under the same control,

they shall be treated (subject to subsection (4)) as all under the control of only one person.

(6) A reference in section 58 or this section to an audience shall be construed in relation to a media enterprise in whichever of the following ways the decision-making authority considers appropriate—

(a) as a reference to any one of the audiences served by that enterprise, taking them separately;

(b) as a reference to all the audiences served by that enterprise, taking them together;

(c) as a reference to a number of those audiences taken together in such group as the decision-making authority considers appropriate; or

(d) as a reference to a part of anything that could be taken to be an audience under any of paragraphs (a) to (c) above.

(7) The criteria for deciding who can be treated for the purposes of this section as comprised in an audience, or as comprised in an audience served by a particular service—

(a) shall be such as the decision-making authority considers appropriate in the circumstances of the case; and

(b) may allow for persons to be treated as members of an audience if they are only potentially members of it.

(8) In this section "audience" includes readership.

(9) The power under subsection (3) of section 58 to modify that section includes power to modify this section.**]**

Textual Amendments

F47 S. 58A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 375(2)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

CHAPTER 3

OTHER SPECIAL CASES

Special public interest cases

59 Intervention by Secretary of State in special public interest cases

(1) Subsection (2) applies where the Secretary of State has reasonable grounds for suspecting that it is or may be the case that a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(2) The Secretary of State may give a notice to the OFT (in this Part "a special intervention notice") if he believes that it is or may be the case that one or more than one consideration specified in section 58 is relevant to a consideration of the special merger situation concerned.

[[F48](3) For the purposes of this Part a special merger situation has been created if—

(a) the condition mentioned in subsection (3A) is satisfied; and

(b) immediately before the enterprises concerned ceased to be distinct—

(i) the conditions mentioned in subsection (3B) were satisfied;

(ii) the condition mentioned in subsection (3C) was satisfied; or

(iii) the condition mentioned in subsection (3D) was satisfied.

(3A) The condition mentioned in this subsection is that—

(a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but

(b) a relevant merger situation would have been created if those enactments were disregarded.

(3B) The conditions mentioned in this subsection are that—

(a) at least one of the enterprises concerned was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom; and

(b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.

(3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.

(3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on.**]**

(5) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this Chapter as they do for the purposes of Chapter 1 but subject to subsection (6).

(6) In their application by virtue of subsection (5) sections 23 to 32 shall have effect as if—

(a) for paragraph (a) of section 23(9) there were substituted—

"(a) in relation to the giving of a special intervention notice, the time when the notice is given;

(aa) in relation to the making of a report by the OFT under section 61, the time of the making of the report;

(ab) in the case of a reference which is treated as having been made under section 62(2) by virtue of section 64(2), such time as the Commission may determine; and";

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(b) the references to the OFT in section 24(2)(a) and (b) included references to the Secretary of State;

(c) the references to the OFT in sections 25(1) to (3), (6) and (8) and 31 included references to the Secretary of State;

(d) the references to the OFT in section 25(4) and (5) were references to the Secretary of State;

(e) the reference in section 25(4) to section 73 were a reference to paragraph 3 of Schedule 7;

(f) the reference in section 25(12) to one extension were a reference to one extension by the OFT and one extension by the Secretary of State;

(g) the powers to extend time-limits under section 25 as applied by subsection (5) above, and the power to request information under section 31(1) as so applied, were not exercisable by the OFT or the Secretary of State before the giving of a special intervention notice;

(h) in subsection (1) of section 31 for the words "section 22" there were substituted " section 62(2) " and, in the application of that subsection to the OFT, for the word "deciding" there were substituted " enabling the Secretary of State to decide ";

(i) in the case of the giving of special intervention notices, the references in sections 23 to 32 to the making of a reference or a reference were, so far as necessary, references to the giving of a special intervention notice or a special intervention notice; and

(j) the references to the OFT in section 32(2)(a) to (c) and (3) were construed in accordance with the above modifications.

[[F49](6A) The Secretary of State may by order amend the conditions mentioned in subsection (3)(b)(ii) and (iii).**]**

(7) No more than one special intervention notice shall be given under subsection (2) in relation to the same special merger situation.

(8) In this section "relevant government contractor" means—

(a) a government contractor—

(i) who has been notified by or on behalf of the Secretary of State of information, documents or other articles relating to defence and of a confidential nature which the government contractor or an employee of his may hold or receive in connection with being such a contractor; and

(ii) whose notification has not been revoked by or on behalf of the Secretary of State; or

(b) a former government contractor who was so notified when he was a government contractor and whose notification has not been revoked by or on behalf of the Secretary of State.

(9) In this section—

"defence" has the same meaning as in section 2 of the Official Secrets Act 1989 (c. 6); and

"government contractor" has the same meaning as in the Act of 1989 and includes any sub-contractor of a government contractor, any sub-contractor of that sub-contractor and any other sub-contractor in a chain of sub-contractors which begins with the sub-contractor of the government contractor.

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Textual Amendments

F48 S. 59(3)-(3D) substituted (29.12.2003) for s. 59(3)(4) by Communications Act 2003 (c. 21), **ss. 378(1)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F49 S. 59(6A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 378(2)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

[F50 59A Construction of conditions in section 59(3C) and (3D)

(1) For the purpose of deciding whether the proportion of one-quarter mentioned in section 59(3C) or (3D) is fulfilled with respect to—

(a) newspapers of any description, or

(b) broadcasting of any description,

the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.

(2) References in section 59(3C) to the supply of newspapers shall, in relation to newspapers of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—

(a) as references to any of those forms of supply taken separately;

(b) as references to all those forms of supply taken together; or

(c) as references to any of those forms of supply taken in groups.

(3) For the purposes of subsection (2) the decision-making authority may treat newspapers as being the subject of different forms of supply whenever—

(a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and

(b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(4) References in section 59(3D) to the provision of broadcasting shall, in relation to broadcasting of any description which is the subject of different forms of provision, be construed in whichever of the following ways the decision-making authority considers appropriate—

(a) as references to any of those forms of provision taken separately;

(b) as references to all those forms of provision taken together; or

(c) as references to any of those forms of provision taken in groups.

(5) For the purposes of subsection (4) the decision-making authority may treat broadcasting as being the subject of different forms of provision whenever—

(a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and

(b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.

(6) The criteria for deciding when newspapers or broadcasting can be treated, for the purposes of section 59, as newspapers or broadcasting of a separate description shall

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be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.

(7) In section 59 and this section "provision" and cognate expressions have the same meaning in relation to broadcasting as in Part 3 of the Communications Act 2003; but this subsection is subject to subsections (4) and (5) of this section.**]**

Textual Amendments

F50 S. 59A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 378(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

60 Special intervention notices under section 59

(1) A special intervention notice shall state—

(a) the special merger situation concerned; and

(b) the consideration specified in section 58 or considerations so specified which are, or may be, relevant to the special merger situation concerned.

(2) Where the Secretary of State believes that it is or may be the case that two or more considerations specified in section 58 are relevant to a consideration of the special merger situation concerned, he may decide not to mention in the special intervention notice such of those considerations as he considers appropriate.

(3) A special intervention notice shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

(4) For the purposes of this Part, a matter to which a special intervention notice relates is finally determined under this Chapter if—

(a) the time within which the OFT **[**F51or (if relevant) OFCOM**]** is to report to the Secretary of State under section 61 **[**F52or (as the case may be) 61A**]** has expired and no such report has been made;

(b) the Secretary of State decides to accept an undertaking or group of undertakings under paragraph 3 of Schedule 7 instead of making a reference under section 62;

(c) the Secretary of State otherwise decides not to make a reference under that section;

(d) the Commission cancels such a reference under section 64(1);

(e) the time within which the Commission is to prepare a report under section 65 and give it to the Secretary of State has expired and no such report has been prepared and given to the Secretary of State;

(f) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;

(g) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;

(h) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; or

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(i) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of Schedule 7 or makes an order under paragraph 11 of that Schedule.

(5) For the purposes of this Part the time when a matter to which a special intervention notice relates is finally determined under this Chapter is—

(a) in a case falling within subsection (4)(a), (e) or (f), the expiry of the time concerned;

(b) in a case falling within subsection (4)(b), the acceptance of the undertaking or group of undertakings concerned;

(c) in a case falling within subsection (4)(c), (d) or (g), the making of the decision concerned;

(d) in a case falling within subsection (4)(h), the making of the decision neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule; and

(e) in a case falling within subsection (4)(i), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

Textual Amendments

F51 Words in s. 60(4)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 13(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F52 Words in s. 60(4)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 13(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

61 Initial investigation and report by OFT

(1) Subsection (2) applies where the Secretary of State has given a special intervention notice in relation to a special merger situation.

(2) The OFT shall, within such period as the Secretary of State may require, give a report to the Secretary of State in relation to the case.

(3) The report shall contain—

(a) advice from the OFT on the considerations relevant to the making of a reference under section 22 or 33 which are also relevant to the Secretary of State's decision as to whether to make a reference under section 62; and

(b) a summary of any representations about the case which have been received by the OFT and which relate to any consideration mentioned in the special intervention notice concerned **[**F53(other than a consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C))**]** and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.

(4) The report shall include a decision as to whether the OFT believes (disregarding section **[**F54**]**59(3B)(b)**]**) that it is, or may be, the case that a special merger situation has been created or (as the case may be) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

[F55(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any consideration which—

(a) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

(b) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.**]**

(5) The report may, in particular, include advice and recommendations on any consideration mentioned in the special intervention notice concerned and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62.

(6) The OFT shall carry out such investigations as it considers appropriate for the purposes of producing a report under this section.

Textual Amendments

F53 Words in s. 61(3)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 379(2)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F54 Words in s. 61(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 379(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F55 S. 61(4A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 379(4)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

[F56**61A Additional investigation and report by OFCOM: certain media mergers**

(1) Subsection (2) applies where—

(a) the Secretary of State has given a special intervention notice in relation to a special merger situation; and

(b) the special intervention notice mentions any consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C).

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

(a) advice and recommendations on any consideration which—

(i) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and

(ii) is or may be relevant to the Secretary of State's decision as to whether to make a reference under section 62; and

(b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.

(4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.**]**

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Textual Amendments

F56 S. 61A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 380**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

62 Power of Secretary of State to refer the matter

(1) Subsection (2) applies where the Secretary of State—

(a) has given a special intervention notice in relation to a special merger situation; and

(b) has received a report of the OFT under section 61 **[**[F57], and any report of OFCOM which is required by virtue of section 61A,**]** in relation to the matter.

(2) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) a special merger situation has been created;

(b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and

(c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

(3) The Secretary of State may make a reference to the Commission if he believes that it is or may be the case that—

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;

(b) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and

(c) taking account only of the relevant consideration or considerations concerned, the creation of that situation may be expected to operate against the public interest.

(4) No reference shall be made under this section if the making of the reference is prevented by [F58]. . . paragraph 4 of Schedule 7.

(5) The Secretary of State, in deciding whether to make a reference under this section, shall accept the decision of the OFT included in its report under section 61 by virtue of subsection (4) of that section.

(6) A reference under this section shall, in particular, specify—

(a) the subsection of this section under which it is made;

(b) the date on which it is made; and

(c) the consideration or considerations mentioned in the special intervention notice which the Secretary of State believes are, or may be, relevant to a consideration of the special merger situation concerned.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Textual Amendments

F57 Words in s. 62(1)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 14** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F58 Words in s. 62(4) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

63 Questions to be decided on references under section 62

(1) The Commission shall, on a reference under section 62(2), decide whether a special merger situation has been created.

(2) The Commission shall, on a reference under section 62(3), decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(3) If the Commission decides that a special merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it shall, on a reference under section 62, decide whether, taking account only of the consideration or considerations mentioned in the reference, the creation of that situation operates or may be expected to operate against the public interest.

(4) The Commission shall, if it has decided on a reference under section 62 that the creation of a special merger situation operates or may be expected to operate against the public interest, decide the following additional questions—

(a) whether action should be taken by the Secretary of State under section 66 for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned;

(b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

Modifications etc. (not altering text)

C25 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

64 Cancellation and variation of references under section 62

(1) The Commission shall cancel a reference under section 62(3) if it considers that the proposal to make arrangements of the kind mentioned in that reference has been abandoned.

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(2) The Commission may, if it considers that doing so is justified by the facts (including events occurring on or after the making of the reference concerned), treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section; and, in such cases, references in this Part to references under those enactments shall, so far as may be necessary, be construed accordingly.

(3) Where, by virtue of subsection (2), the Commission treats a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section, paragraphs 1, 2, 7 and 8 of Schedule 7 shall, in particular, apply as if the reference had been made under subsection (3) or (as the case may be) (2) of that section instead of under subsection (2) or (3) of that section.

(4) Subsection (5) applies in relation to any undertaking accepted under paragraph 1 of Schedule 7, or any order made under paragraph 2 of that Schedule, which is in force immediately before the Commission, by virtue of subsection (2), treats a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section.

(5) The undertaking or order shall, so far as applicable, continue in force as if—

(a) in the case of an undertaking or order which relates to a reference under subsection (2) of section 62, accepted or made in relation to a reference made under subsection (3) of that section; and

(b) in the case of an undertaking or order which relates to a reference made under subsection (3) of that section, accepted or made in relation to a reference made under subsection (2) of that section;

and the undertaking or order concerned may be varied, superseded, released or revoked accordingly.

(6) The Secretary of State may at any time vary a reference under section 62.

(7) The Secretary of State shall consult the Commission before varying any such reference.

(8) Subsection (7) shall not apply if the Commission has requested the variation concerned.

(9) No variation by the Secretary of State under this section shall be capable of altering the consideration or considerations specified in the reference or the period permitted by virtue of section 65 within which the report of the Commission under that section is to be prepared and given to the Secretary of State.

65 Investigations and reports on references under section 62

(1) The Commission shall prepare a report on a reference under section 62 and give it to the Secretary of State within the period permitted by virtue of this section.

(2) The report shall, in particular, contain—

(a) the decisions of the Commission on the questions which it is required to answer by virtue of section 63;

(b) its reasons for its decisions; and

(c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

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[F59(2A) Where the report relates to a reference under section 62 which has been made after a report of OFCOM under section 61A, the Commission shall give a copy of its report (whether or not published) to OFCOM.**]**

(3) Sections 51 and 52 (but not section 53) shall apply for the purposes of a report under this section as they apply for the purposes of a report under section 50.

(4) The Commission shall carry out such investigations as it considers appropriate for the purpose of producing a report under this section.

Textual Amendments

F59 S. 65(2A) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 15** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

66 Decision and enforcement action by Secretary of State

(1) Subsection (2) applies where the Secretary of State has received a report of the Commission under section 65 in relation to a special merger situation.

(2) The Secretary of State shall, in connection with a reference under section 62(2) or (3), decide the questions which the Commission is required to decide by virtue of section 63(1) to (3).

(3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 30 days beginning with the receipt of the report of the Commission under section 65; and subsection (8) of section 54 shall apply for the purposes of this subsection as it applies for the purposes of subsection (5) of that section.

(4) In making his decisions under subsection (2), the Secretary of State shall accept the decisions of the report of the Commission under section 65 as to whether a special merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation.

(5) Subsection (6) applies where the Secretary of State has decided under subsection (2) that—

(a) a special merger situation has been created or arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation;

(b) at least one consideration which is mentioned in the special intervention notice concerned is relevant to a consideration of the special merger situation concerned; and

(c) taking account only of the relevant consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest;

and has so decided, and published his decision, within the period required by subsection (3).

(6) The Secretary of State may take such action under paragraph 9 or 11 of Schedule 7 as he considers to be reasonable and practicable to remedy, mitigate or prevent any of the

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effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the special merger situation concerned.

(7) In making a decision under subsection (6), the Secretary of State shall, in particular, have regard to the report of the Commission under section 65.

European mergers

67 Intervention to protect legitimate interests

(1) Subsection (2) applies where—

(a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that—

(i) a relevant merger situation has been created or that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(ii) a concentration with a Community dimension (within the meaning of the **[**F60EC Merger Regulation**]**), or a part of such a concentration, has thereby arisen or will thereby arise;

(b) a reference F61. . . is prevented from being made under **[**F62section 22 or 33**]** in relation to the relevant merger situation concerned **[**F63(whether or not there would otherwise have been a duty to make such a reference)**]** by virtue of **[**F20EU**]** law or anything done under or in accordance with it; and

(c) the Secretary of State is considering whether to take appropriate measures to protect legitimate interests as permitted by article **[**F64**]**21(4) of the EC Merger Regulation**]** .

(2) The Secretary of State may give a notice to the OFT (in this section "a European intervention notice") if he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.

(3) A European intervention notice shall state—

(a) the relevant merger situation concerned;

(b) the public interest consideration or considerations which are, or may be, relevant to a consideration of the relevant merger situation concerned; and

(c) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(4) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to a consideration of the relevant merger situation concerned, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(5) No more than one European intervention notice shall be given under subsection (2) in relation to the same relevant merger situation.

(6) Where the Secretary of State has given a European intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

(7) For the purposes of deciding whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect,

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will result in the creation of a relevant merger situation, sections 23 to 32 (read together with section 34) shall apply for the purposes of this section as they do for the purposes of Chapter 1 but subject to subsection (8).

(8) In their application by virtue of subsection (7) sections 23 to 32 shall have effect as if—

(a) references in those sections to the decision-making authority were references to the Secretary of State;

(b) for paragraphs (a) and (b) of section 23(9) there were substituted " , in relation to the giving of a European intervention notice, the time when the notice is given ";

(c) the references to the OFT in section 24(2)(a) and (b) included references to the Secretary of State;

(d) sections 25, 31 and 32 were omitted; and

(e) the references in sections 23 to 29 to the making of a reference or a reference were, so far as necessary, references to the giving of a European intervention notice or a European intervention notice.

(9) Section 42(3) shall, in its application to this section and section 68, have effect as if for the words "intervention notice" there were substituted " European intervention notice ".

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F60 Words in s. 67(1)(a)(ii) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(20)(a)**

F61 Words in s. 67(1)(b) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406(7), 411(2)(3), Sch. 16 para. 16(a), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F62 Words in s. 67(1)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 16(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F63 Words in s. 67(1)(b) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 16(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1(subject to arts. 3(3), 11)

F64 Words in s. 67(1)(c) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(20)(b)**

68 Scheme for protecting legitimate interests

(1) The Secretary of State may by order provide for the taking of action, where a European intervention notice has been given, to remedy, mitigate or prevent effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of a European relevant merger situation.

(2) In subsection (1) "European relevant merger situation" means a relevant merger situation—

(a) which has been created or will be created if arrangements which are in progress or in contemplation are carried into effect;

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(b) by virtue of which a concentration with a Community dimension (within the meaning of the **[**F65EC Merger Regulation**]**), or a part of such a concentration, has arisen or will arise; and

(c) in relation to which a reference F66. . . was prevented from being made under **[**F67section 22 or 33 (whether or not there would otherwise have been a duty to make such a reference)**]** by virtue of **[**F20EU**]** law or anything done under or in accordance with it.

(3) Provision made under subsection (1) shall include provision ensuring that considerations which are not public interest considerations mentioned in the European intervention notice concerned may not be taken into account in determining whether anything operates, or may be expected to operate, against the public interest.

(4) Provision made under subsection (1) shall include provision—

(a) applying with modifications sections 23 to 32 for the purposes of deciding for the purposes of this section whether a relevant merger situation has been created or whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) requiring the OFT to make a report to the Secretary of State before a reference is made;

(c) enabling the Secretary of State to make a reference to the Commission;

(d) requiring the Commission to investigate and report to the Secretary of State on such a reference;

(e) enabling the taking of interim and final enforcement action.

(5) An order under this section may include provision (including provision for the creation of offences and penalties, the payment of fees and the delegation of functions) corresponding to any provision made in, or in connection with, this Part in relation to intervention notices or special intervention notices and the cases to which they relate.

(6) In this section "European intervention notice" has the same meaning as in section 67.

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F65 Words in s. 68(2)(b) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(21)**

F66 Words in s. 68(2)(c) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406(7), 411(2)(3), Sch. 16 para. 17(a), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F67 Words in s. 68(2)(c) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 17(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Other

69 Newspaper mergers

F68 . . . . . .

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Textual Amendments

F68 S. 69 repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 374, 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

70 Water mergers

(1) For sections 32 to 35 of the Water Industry Act 1991 (c. 56) (special provision for water merger references) there shall be substituted—

"32 Duty to refer merger of water or sewerage undertaking

Subject to section 33 below, it shall be the duty of the OFT to make a merger reference to the Competition Commission if the OFT believes that it is or may be the case—

(a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or

(b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.

33 Exclusion of small mergers from duty to make reference

(1) The OFT shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the OFT—

(a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or

(b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.

(2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—

(a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or

(b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.

(3) For the purposes of subsection (1)(b) above—

(a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and

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(b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.

(4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.

(5) Regulations under subsection (4) above may, in particular, make provision as to—

(a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and

(b) the date or dates by reference to which an enterprise's turnover is to be determined.

(6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).

(7) The Secretary of State may by regulations amend subsection (1) above so as—

(a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or

(b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.

(8) Regulations under subsection (7) above—

(a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and

(b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.

(9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.

34 Application of provisions of Enterprise Act 2002

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.

35 Construction of merger provisions

(1) In this Chapter (including Schedule 4ZA)—

"enterprise" has the same meaning as in Part 3 of the 2002 Act; and

"water enterprise" means an enterprise carried on by a water undertaker.

(2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct

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enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.

(3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the OFT or the Secretary of State, in a case in which, or to any extent to which, the OFT is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.

(4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.

(5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the OFT is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA."

(2) Before Schedule 4A to the Act of 1991 there shall be inserted, as Schedule 4ZA, the Schedule set out in Schedule 6 to this Act.

CHAPTER 4

ENFORCEMENT

Powers exercisable before references under section 22 or 33

71 Initial undertakings: completed mergers

(1) Subsection (2) applies where the OFT is considering whether to make a reference under section 22.

(2) The OFT may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3) No undertaking shall be accepted under subsection (2) unless the OFT has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created.

(4) An undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the OFT.

(5) An undertaking which—

(a) is in force under this section in relation to a possible reference or reference under section 22; and

(b) has not been adopted under section 80 or paragraph 1 of Schedule 7;

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shall cease to be in force if an order under section 72 or 81 comes into force in relation to that reference or an order under paragraph 2 of that Schedule comes into force in relation to the matter.

(6) An undertaking under this section shall, if it has not previously ceased to be in force and if it has not been adopted under section 80 or paragraph 1 of Schedule 7, cease to be in force—

(a) where the OFT has decided to make the reference concerned under section 22, at the end of the period of 7 days beginning with the making of the reference;

(b) where the OFT has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;

(c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and

(d) where the OFT has otherwise decided not to make the reference concerned under section 22, on the making of that decision.

(7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(8) In this section and section 72 "pre-emptive action" means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the Commission's decisions on the reference.

72 Initial enforcement orders: completed mergers

(1) Subsection (2) applies where the OFT is considering whether to make a reference under section 22.

(2) The OFT may by order, for the purpose of preventing pre-emptive action—

(a) prohibit or restrict the doing of things which the OFT considers would constitute pre-emptive action;

(b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;

(c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

(d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

(3) No order shall be made under subsection (2) unless the OFT has reasonable grounds for suspecting that it is or may be the case that—

(a) a relevant merger situation has been created; and

(b) pre-emptive action is in progress or in contemplation.

(4) An order under this section—

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(5) An order which—

(a) is in force under this section in relation to a possible reference or a reference under section 22; and

(b) has not been adopted under section 81 or paragraph 2 of Schedule 7;

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shall cease to be in force if an undertaking under section 71 or 80 comes into force in relation to that reference or an undertaking under paragraph 1 of that Schedule comes into force in relation to the matter.

(6) An order under this section shall, if it has not previously ceased to be in force and if it is not adopted under section 81 or paragraph 2 of Schedule 7, cease to be in force—

(a) where the OFT has decided to make the reference concerned under section 22, at the end of the period of 7 days beginning with the making of the reference;

(b) where the OFT has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;

(c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and

(d) where the OFT has otherwise decided not to make the reference concerned under section 22, on the making of that decision.

(7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

73 Undertakings in lieu of references under section 22 or 33

(1) Subsection (2) applies if the OFT considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b) or (as the case may be) 33(3)(b) but taking account of the power of the OFT under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).

(2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.

(4) In proceeding under subsection (2), the OFT may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

(5) An undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the OFT.

(6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.

(7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

74 Effect of undertakings under section 73

(1) The relevant authority shall not make a reference under section 22, 33 or 45 in relation to the creation of a relevant merger situation if—

(a) the OFT has accepted an undertaking or group of undertakings under section 73; and

(b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.

(2) Subsection (1) does not prevent the making of a reference if material facts about relevant arrangements or transactions, or relevant proposed arrangements or transactions, were not notified (whether in writing or otherwise) to the OFT or made public before any undertaking concerned was accepted.

(3) For the purposes of subsection (2) arrangements or transactions, or proposed arrangements or transactions, are relevant if they are the ones in consequence of which the enterprises concerned ceased or may have ceased, or may cease, to be distinct enterprises.

(4) In subsection (2) "made public" means so publicised as to be generally known or readily ascertainable.

(5) In this section "relevant authority" means—

(a) in relation to a possible reference under section 22 or 33, the OFT; and

(b) in relation to a possible reference under section 45, the Secretary of State.

75 Order-making power where undertakings under section 73 not fulfilled etc.

(1) Subsection (2) applies where the OFT considers that—

(a) an undertaking accepted by it under section 73 has not been, is not being or will not be fulfilled; or

(b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the OFT by the person giving the undertaking before the OFT decided to accept the undertaking.

(2) The OFT may, for any of the purposes mentioned in section 73(2), make an order under this section.

(3) Subsections (3) and (4) of section 73 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.

(4) An order under this section may contain—

(a) anything permitted by Schedule 8; and

(b) such supplementary, consequential or incidental provision as the OFT considers appropriate.

(5) An order under this section—

(a) shall come into force at such time as is determined by or under the order;

(b) may contain provision which is different from the provision contained in the undertaking concerned; and

(c) may be varied or revoked by another order.

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(6) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

Modifications etc. (not altering text)

C26 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C27 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C28 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

76 Supplementary interim order-making power

(1) Subsection (2) applies where—

(a) the OFT has the power to make an order under section 75 in relation to a particular undertaking and intends to make such an order; or

(b) the Commission has the power to make an order under section 83 in relation to a particular undertaking and intends to make such an order.

(2) The OFT or (as the case may be) the Commission may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this section.

(3) No order shall be made under subsection (2) unless the OFT or (as the case may be) the Commission has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under section 75 or (as the case may be) 83 is in progress or in contemplation.

(4) An order under subsection (2) may—

(a) prohibit or restrict the doing of things which the OFT or (as the case may be) the Commission considers would prejudice the making of the order under section 75 or (as the case may be) 83;

(b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;

(c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

(d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

(5) An order under this section—

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(6) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on—

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(a) the coming into force of an order under section 75 or (as the case may be) 83 in relation to the undertaking concerned; or

(b) the making of the decision not to proceed with such an order.

(7) The OFT or (as the case may be) the Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

Interim restrictions and powers

77 Restrictions on certain dealings: completed mergers

(1) Subsections (2) and (3) apply where—

(a) a reference has been made under section 22 but not finally determined; and

(b) no undertakings under section 71 or 80 are in force in relation to the relevant merger situation concerned and no orders under section 72 or 81 are in force in relation to that situation.

(2) No relevant person shall, without the consent of the Commission—

(a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;

(b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or

(c) transfer the ownership or control of any enterprises to which the reference relates.

(3) No relevant person shall, without the consent of the Commission, assist in any of the activities mentioned in paragraphs (a) to (c) of subsection (2).

(4) The prohibitions in subsections (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.

(5) The consent of the Commission under subsection (2) or (3)—

(a) may be general or special;

(b) may be revoked by the Commission; and

(c) shall be published in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of any person entitled to the benefit of it.

(6) Paragraph (c) of subsection (5) shall not apply if the Commission considers that publication is not necessary for the purpose mentioned in that paragraph.

(7) Subsections (2) and (3) shall apply to a person's conduct outside the United Kingdom if (and only if) he is—

(a) a United Kingdom national;

(b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(c) a person carrying on business in the United Kingdom.

(8) In this section "relevant person" means—

(a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;

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(b) any subsidiary of any person falling within paragraph (a); or

(c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.

78 Restrictions on certain share dealings: anticipated mergers

(1) Subsection (2) applies where—

(a) a reference has been made under section 33; and

(b) no undertakings under section 80 are in force in relation to the relevant merger situation concerned and no orders under section 81 are in force in relation to that situation.

(2) No relevant person shall, without the consent of the Commission, directly or indirectly acquire during the relevant period 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.

(3) The consent of the Commission under subsection (2)—

(a) may be general or special;

(b) may be revoked by the Commission; and

(c) shall be published in such manner as the Commission considers appropriate for bringing it to the attention of any person entitled to the benefit of it.

(4) Paragraph (c) of subsection (3) shall not apply if the Commission considers that publication is not necessary for the purpose mentioned in that paragraph.

(5) Subsection (2) shall apply to a person's conduct outside the United Kingdom if (and only if) he is—

(a) a United Kingdom national;

(b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(c) a person carrying on business in the United Kingdom.

(6) In this section and section 79—

"company" includes any body corporate;

"relevant period" means the period beginning with the making of the reference concerned and ending when the reference is finally determined;

"relevant person" means—

(a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;

(b) any subsidiary of any person falling within paragraph (a); or

(c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and

"share" means share in the capital of a company, and includes stock.

79 Sections 77 and 78: further interpretation provisions

(1) For the purposes of this Part a reference under section 22 or 33 is finally determined if—

(a) the reference is cancelled under section 37(1);

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(b) the time within which the Commission is to prepare and publish a report under section 38 in relation to the reference has expired and no such report has been prepared and published;

(c) the report of the Commission under section 38 contains the decision that there is not an anti-competitive outcome;

(d) the report of the Commission under section 38 contains the decision that there is an anti-competitive outcome and the Commission has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84; or

(e) the report of the Commission under section 38 contains the decision that there is an anti-competitive outcome and the Commission has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.

(2) For the purposes of this Part the time when a reference under section 22 or 33 is finally determined is—

(a) in a case falling within subsection (1)(a), the making of the decision concerned;

(b) in a case falling within subsection (1)(b), the expiry of the time concerned;

(c) in a case falling within subsection (1)(c), the publication of the report;

(d) in a case falling within subsection (1)(d), the making of the decision under section 41(2); and

(e) in a case falling within subsection (1)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(3) For the purposes of section 78 and subject to subsection (4) below, 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) he is not the registered holder but acquires the right to exercise, or to control the exercise of, any right conferred by the holding of the shares; or

(c) he—

(i) 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

(ii) assumes an obligation to acquire such an interest.

(4) The circumstances in which a person acquires an interest in shares for the purposes of section 78 do not include those where he acquires an interest in pursuance of an obligation assumed before the publication by the OFT of the reference concerned.

(5) The circumstances in which a person acquires a right mentioned in subsection (3)—

(a) include those where he acquires a right, or assumes an obligation, whose exercise or fulfilment would give him that right; but

(b) do 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.

(6) References to rights and obligations in subsections (3) to (5) include conditional rights and conditional obligations.

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(7) References in sections 77 and 78 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.

(8) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of sections 77 and 78 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 26 to determine whether enterprises are brought under common control.

(9) **[**[F69]Section 1159 of, and Schedule 6 to, the Companies Act 2006**]** (c. 6) shall apply for the purposes of sections 77 and 78 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 **[**[F70]paragraph 8 of Schedule 6**]** as so applied shall be construed accordingly.

Textual Amendments

F69 Words in s. 79(9) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 199(2)(a)** (with art. 10)

F70 Words in s. 79(9) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 199(2)(b)** (with art. 10)

Modifications etc. (not altering text)

C29 S. 79 applied (with modifications) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 13, **Sch. 2 para. 8(9)(10)**

80 Interim undertakings

(1) Subsections (2) and (3) apply where a reference under section 22 or 33 has been made but is not finally determined.

(2) The Commission may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3) The Commission may, for the purpose of preventing pre-emptive action, adopt an undertaking accepted by the OFT under section 71 if the undertaking is still in force when the Commission adopts it.

(4) An undertaking adopted under subsection (3)—

(a) shall continue in force, in accordance with its terms, when adopted;

(b) may be varied or superseded by an undertaking under this section; and

(c) may be released by the Commission.

(5) Any other undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the Commission.

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(6) References in this Part to undertakings under this section shall, unless the context otherwise requires, include references to undertakings adopted under this section; and references to the acceptance or giving of undertakings under this section shall be construed accordingly.

(7) An undertaking which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an order under section 81 comes into force in relation to that reference.

(8) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 or 33 is finally determined.

(9) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(10) In this section and section 81 "pre-emptive action" means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the Commission's decisions on the reference.

81 Interim orders

(1) Subsections (2) and (3) apply where a reference has been made under section 22 or 33 but is not finally determined.

(2) The Commission may by order, for the purpose of preventing pre-emptive action—

(a) prohibit or restrict the doing of things which the Commission considers would constitute pre-emptive action;

(b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;

(c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

(d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

(3) The Commission may, for the purpose of preventing pre-emptive action, adopt an order made by the OFT under section 72 if the order is still in force when the Commission adopts it.

(4) An order adopted under subsection (3)—

(a) shall continue in force, in accordance with its terms, when adopted; and

(b) may be varied or revoked by an order under this section.

(5) Any other order under this section—

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(6) References in this Part to orders under this section shall, unless the context otherwise requires, include references to orders adopted under this section; and references to the making of orders under this section shall be construed accordingly.

(7) An order which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an undertaking under section 80 comes into force in relation to that reference.

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(8) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 or 33 is finally determined.

(9) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

Final powers

82 Final undertakings

(1) The Commission may, in accordance with section 41, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.

(2) An undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the Commission.

(3) An undertaking which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an order under section 76(1)(b) or 83 comes into force in relation to the subject-matter of the undertaking.

(4) No undertaking shall be accepted under this section in relation to a reference under section 22 or 33 if an order has been made under—

(a) section 76(1)(b) or 83 in relation to the subject-matter of the undertaking; or

(b) section 84 in relation to that reference.

(5) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

83 Order-making power where final undertakings not fulfilled

(1) Subsection (2) applies where the Commission considers that—

(a) an undertaking accepted by it under section 82 has not been, is not being or will not be fulfilled; or

(b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the Commission or the OFT by the person giving the undertaking before the Commission decided to accept the undertaking.

(2) The Commission may, for any of the purposes mentioned in section 41(2), make an order under this section.

(3) Subsections (3) to (5) of section 41 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.

(4) An order under this section may contain—

(a) anything permitted by Schedule 8; and

(b) such supplementary, consequential or incidental provision as the Commission considers appropriate.

(5) An order under this section—

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(a) shall come into force at such time as is determined by or under the order;
(b) may contain provision which is different from the provision contained in the undertaking concerned; and
(c) may be varied or revoked by another order.

(6) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

Modifications etc. (not altering text)

C30 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C31 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C32 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

84 Final orders

(1) The Commission may, in accordance with section 41, make an order under this section.

(2) An order under this section may contain—
(a) anything permitted by Schedule 8; and
(b) such supplementary, consequential or incidental provision as the Commission considers appropriate.

(3) An order under this section—
(a) shall come into force at such time as is determined by or under the order; and
(b) may be varied or revoked by another order.

(4) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

(5) No order shall be made under this section in relation to a reference under section 22 or 33 if an undertaking has been accepted under section 82 in relation to that reference.

Modifications etc. (not altering text)

C33 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 para. 5 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C34 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 para. 5 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C35 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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Public interest and special public interest cases

85 Enforcement regime for public interest and special public interest cases

(1) Schedule 7 (which provides for the enforcement regime in public interest and special public interest cases) shall have effect.

(2) The OFT may advise the Secretary of State in relation to the taking by him of enforcement action under Schedule 7.

Undertakings and orders: general provisions

86 Enforcement orders: general provisions

(1) An enforcement order may extend to a person's conduct outside the United Kingdom if (and only if) he is—

(a) a United Kingdom national;

(b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(c) a person carrying on business in the United Kingdom.

(2) Nothing in an enforcement order shall have effect so as to—

(a) cancel or modify conditions in licences granted—

(i) under a patent granted under the Patents Act 1977 (c. 37) or a European patent (UK) (within the meaning of the Act of 1977); or

(ii) in respect of a design registered under the Registered Designs Act 1949 (c. 88);

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.

(3) An enforcement order may prohibit the performance of an agreement already in existence when the order is made.

(4) Schedule 8 (which provides for the contents of certain enforcement orders) shall have effect.

(5) Part 1 of Schedule 9 (which enables certain enforcement orders to modify licence conditions etc. in regulated markets) shall have effect.

(6) In this Part "enforcement order" means an order made under section 72, 75, 76, 81, 83 or 84 or under paragraph 2, 5, 6, 10 or 11 of Schedule 7.

Modifications etc. (not altering text)

C36 S. 86 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(b)(3)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C37 S. 86(2) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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S. 86(2) applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C38 S. 86(3) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 86(3) applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

87 Delegated power of directions

(1) An enforcement order may authorise the person making the order to give directions falling within subsection (2) to—

(a) a person specified in the directions; or

(b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.

(2) Directions fall within this subsection if they are directions—

(a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the enforcement order concerned; or

(b) to do, or refrain from doing, anything so specified or described which the person might be required by that order to do or refrain from doing.

(3) An enforcement order may authorise the person making the order to vary or revoke any directions so given.

(4) The court may by order require any person who has failed to comply with directions given by virtue of this section to comply with them, or otherwise remedy his failure, within such time as may be specified in the order.

(5) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.

(6) An order under subsection (4) or (5) shall be made on the application of the person authorised by virtue of this section to give the directions concerned.

(7) An order under subsection (4) or (5) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.

(8) In this section "the court" means—

(a) in relation to England and Wales or Northern Ireland, the High Court; and

(b) in relation to Scotland, the Court of Session.

Modifications etc. (not altering text)

C39 S. 87 applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C40 S. 87 applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C41 S. 87 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(c)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

88 Contents of certain enforcement orders

(1) This section applies in relation to any order under section 75, 83 or 84 or under paragraph 5, 10 or 11 of Schedule 7.

(2) The order or any explanatory material accompanying the order shall state—

(a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;

(b) the date on which the order comes into force;

(c) the possible consequences of not complying with the order; and

(d) the section of this Part under which a review can be sought in relation to the order.

Modifications etc. (not altering text)

C42 S. 88 applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C43 S. 88 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(d)(4)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

89 Subject-matter of undertakings

(1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.

(2) In this Part "enforcement undertaking" means an undertaking under section 71, 73, 80 or 82 or under paragraph 1, 3 or 9 of Schedule 7.

Modifications etc. (not altering text)

C44 S. 89 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(e)(5)** (as amended by (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C45 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C46 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C47 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), s. 278, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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90 Procedural requirements for certain undertakings and orders

Schedule 10 (which provides for the procedure for accepting certain enforcement undertakings and making certain enforcement orders and for their termination) shall have effect.

Modifications etc. (not altering text)

C48 S. 90 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

91 Register of undertakings and orders

(1) The OFT shall compile and maintain a register for the purposes of this Part.

(2) The register shall be kept in such form as the OFT considers appropriate.

(3) The OFT shall ensure that the following matters are entered in the register—

(a) the provisions of any enforcement undertaking accepted under this Part;

(b) the provisions of any enforcement order made under this Part;

(c) the details of any variation, release or revocation of such an undertaking or order; and

(d) the details of any consent given by the Commission under section 77(2) or (3) or 78(2) or by the Secretary of State under paragraph 7(2) or (3) or 8(2) of Schedule 7.

(4) The duty in subsection (3) does not extend to anything of which the OFT is unaware.

(5) The Commission and the Secretary of State shall inform the OFT of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them, enforcement orders made by them or consents given by them.

(6) The OFT shall ensure that the contents of the register are available to the public—

(a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and

(b) subject to such reasonable fees (if any) as the OFT may determine.

(7) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

Modifications etc. (not altering text)

C49 S. 91 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(f)(6)**

C50 S. 91 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11) (as amended by (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

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C51 Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

Enforcement functions of OFT

92 Duty of OFT to monitor undertakings and orders

(1) The OFT shall keep under review—

(a) the carrying out of any enforcement undertaking or any enforcement order; and

(b) compliance with the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.

(2) The OFT shall, in particular, from time to time consider—

(a) whether an enforcement undertaking or enforcement order has been or is being complied with;

(b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and—

(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 enforcement undertaking; and

(c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.

(3) The OFT shall give the Commission or (as the case may be) the Secretary of State such advice as it considers appropriate in relation to—

(a) any possible variation or release by the Commission or (as the case may be) the Secretary of State of an enforcement undertaking accepted by it or (as the case may be) him;

(b) any possible new enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State so as to supersede another enforcement undertaking given to the Commission or (as the case may be) the Secretary of State;

(c) any possible variation or revocation by the Commission or (as the case may be) the Secretary of State of an enforcement order made by the Commission or (as the case may be) the Secretary of State;

(d) any possible enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State instead of an enforcement order or any possible enforcement order to be made by the Commission or (as the case may be) the Secretary of State instead of an enforcement undertaking;

(e) the enforcement by virtue of section 94(6) to (8) of any enforcement undertaking or enforcement order; or

(f) the enforcement by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.

(4) The OFT shall take such action as it considers appropriate in relation to—

(a) any possible variation or release by it of an enforcement undertaking accepted by it;

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(b) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;

(c) any possible variation or revocation by it of an enforcement order made by it;

(d) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;

(e) the enforcement by it by virtue of section 94(6) of any enforcement undertaking or enforcement order; or

(f) the enforcement by it by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.

(5) The OFT shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.

(6) The OFT shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).

(7) The OFT shall—

(a) give any report prepared by it under subsection (6) to the Commission;

(b) give a copy of the report to the Secretary of State; and

(c) publish the report.

Modifications etc. (not altering text)

C52 S. 92 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(g)(7)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C53 S. 92 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

C54 Ss. 91(3), 92(1)(a), 162(1) and 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

93 Further role of OFT in relation to undertakings and orders

(1) Subsections (2) and (3) apply where—

(a) the Commission is considering whether to accept undertakings under section 80 or 82; or

(b) the Secretary of State is considering whether to accept undertakings under paragraph 1, 3 or 9 of Schedule 7.

(2) The Commission or (as the case may be) the Secretary of State (in this section "the relevant authority") may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.

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(3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT's consultations within such period as the relevant authority may require.

(4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.

(5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.

(6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the OFT shall give such advice as it considers appropriate.

Modifications etc. (not altering text)

C55 S. 93 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(h)(8)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C56 S. 93 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(d)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Other

94 Rights to enforce undertakings and orders

(1) This section applies to any enforcement undertaking or enforcement order.

(2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.

(3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.

(4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or an enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.

(6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the OFT for an injunction or for interdict or for any other appropriate relief or remedy.

(7) Compliance with an undertaking under section 80 or 82, an order made by the Commission under section 76 or an order under section 81, 83 or 84, shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.

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(8) Compliance with an undertaking under paragraph 1, 3 or 9 of Schedule 7, an order made by the Secretary of State under paragraph 2 of that Schedule or an order under paragraph 5, 6, 10 or 11 of that Schedule, shall also be enforceable by civil proceedings brought by the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.

(9) Subsections (6) to (8) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

Modifications etc. (not altering text)

C57 S. 94 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(i)(9)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C58 S. 94 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(e)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

C59 S. 94(1) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**. Sch. (with art. 8)
S. 94(1) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C60 S. 94(2) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 94(2) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C61 S. 94(3) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 94(3) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C62 S. 94(4) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 94(4) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C63 S. 94(5) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 94(5) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C64 S. 94(8) applied (20.6.2003) by 1980 c.21 s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 94(8) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C65 S. 94(9) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 94(9) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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95 Rights to enforce statutory restrictions

(1) The obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 shall be a duty owed to any person who may be affected by a contravention of the enactment concerned.

(2) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(3) In any proceedings brought under subsection (2) against a person who has an obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the enactment concerned.

(4) Compliance with section 77(2) or (3) or 78(2) shall also be enforceable by civil proceedings brought by the OFT or the Commission for an injunction or for interdict or for any other appropriate relief or remedy.

(5) Compliance with paragraph 7(2) or (3) or 8(2) of Schedule 7 shall also be enforceable by civil proceedings brought by the OFT or the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.

(6) Subsections (4) and (5) shall not prejudice any right that a person may have by virtue of subsection (2) to bring civil proceedings for contravention or apprehended contravention of section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7.

Modifications etc. (not altering text)

C66 S. 95 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(j)(10)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

CHAPTER 5

SUPPLEMENTARY

Merger notices

96 Merger notices

(1) A person authorised to do so by regulations under section 101 may give notice to the OFT of proposed arrangements which might result in the creation of a relevant merger situation.

(2) Any such notice (in this Part a "merger notice")—

(a) shall be in the prescribed form; and

(b) shall state that the existence of the proposal has been made public.

(3) No reference shall be made under section 22, 33 or 45 in relation to—

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(a) arrangements of which notice is given under subsection (1) above or arrangements which do not differ from them in any material respect; or

(b) the creation of any relevant merger situation which is, or may be, created in consequence of carrying such arrangements into effect;

if the period for considering the merger notice has expired without a reference being made under that section in relation to those arrangements.

(4) Subsection (3) is subject to section 100.

(5) In this section and sections 99(5)(c) and 100(1)(c) "prescribed" means prescribed by the OFT by notice having effect for the time being and published in the London, Edinburgh and Belfast Gazettes.

(6) In this Part "notified arrangements" means arrangements of which notice is given under subsection (1) above or arrangements not differing from them in any material respect.

97 Period for considering merger notices

(1) The period for considering a merger notice is, subject as follows, the period of 20 days beginning with the first day after—

(a) the notice has been received by the OFT; and

(b) any fee payable by virtue of section 121 to the OFT in respect of the notice has been paid.

(2) Where no intervention notice is in force in relation to the matter concerned, the OFT may by notice to the person who gave the merger notice extend by a further 10 days the period for considering the merger notice.

(3) Where an intervention notice is in force in relation to the matter concerned and there has been no extension under subsection (2), the OFT may by notice to the person who gave the merger notice extend by a further 20 days the period for considering the merger notice.

(4) Where an intervention notice is in force in relation to the matter concerned and there has been an extension under subsection (2), the OFT may by notice to the person who gave the merger notice extend the period for considering the merger notice by a further number of days which, including any extension already made under subsection (2), does not exceed 20 days.

(5) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the OFT considers that the person has failed to provide, within the period stated in a notice under section 99(2) and in the authorised or required manner, information requested of him in that notice.

(6) An extension under subsection (5) shall be for the period until the person concerned provides the information to the satisfaction of the OFT or, if earlier, the cancellation by the OFT of the extension.

(7) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the OFT is seeking undertakings under section 73 or (as the case may be) the Secretary of State is seeking undertakings under paragraph 3 of Schedule 7.

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(8) An extension under subsection (7) shall be for the period beginning with the receipt of the notice under that subsection and ending with the earliest of the following events—

(a) the giving of the undertakings concerned;

(b) the expiry of the period of 10 days beginning with the first day after the receipt by the OFT of a notice from the person from whom the undertakings are being sought stating that he does not intend to give the undertakings; or

(c) the cancellation by the OFT of the extension.

(9) The Secretary of State may by notice to the person who gave the merger notice extend the period for considering a merger notice if, by virtue of paragraph 3(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 45.

(10) An extension under subsection (9) shall be for the period of the delay.

(11) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article **[**F71**]**22(1) of the EC Merger Regulation**]**(but is not yet proceeding with the matter in pursuance of such a request).

(12) An extension under subsection (11) shall be for the period beginning with the receipt of the notice under that subsection and ending with the receipt of a notice under subsection (13).

(13) The OFT shall, in connection with any notice given by it under subsection (11), by notice inform the person who gave the merger notice of the completion by the European Commission of its consideration of the request of the United Kingdom.

Textual Amendments

F71 Words in s. 97(11) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(22)**

98 Section 97: supplementary

(1) A notice under section 97(2), (3), (4), (5), (7), (9) or (11) shall be given, before the end of the period for considering the merger notice, to the person who gave the merger notice.

(2) A notice under section 97(5)—

(a) shall also be given within 5 days of the end of the period within which the information is to be provided and which is stated in the notice under section 99(2); and

(b) shall also inform the person who gave the merger notice of—

(i) the OFT's opinion as mentioned in section 97(5); and

(ii) the OFT's intention to extend the period for considering a merger notice.

(3) In determining for the purposes of section 97(1), (2), (3), (4) or (8)(b) or subsection (2)(a) above any period which is expressed in the enactment concerned as a period of days or number of days no account shall be taken of—

(a) Saturday, Sunday, Good Friday and Christmas Day; and

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(b) any day which is a bank holiday in England and Wales.

(4) Any reference in this Part (apart from in section 97(1) and section 99(1)) to the period for considering a merger notice shall, if that period is extended by virtue of any one or more of subsections (2), (3), (4) (5), (7), (9) and (11) of section 97 in relation to a particular case, be construed in relation to that case as a reference to that period as so extended; but only one extension is possible under section 97(2), (3) or (4).

(5) Where the period for considering a merger notice is extended or further extended by virtue of section 97, the period as extended or (as the case may be) further extended shall, subject to subsections (6) and (7), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).

(6) Subsection (7) applies where—

(a) the period for considering a merger notice is further extended;

(b) the further extension and at least one previous extension is made under one or more of subsections (5), (7), (9) and (11) of section 97; and

(c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

(7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.

99 Certain functions of OFT and Secretary of State in relation to merger notices

(1) The OFT shall, so far as practicable and when the period for considering any merger notice begins, take such action as the OFT considers appropriate to bring—

(a) the existence of the proposal;

(b) the fact that the merger notice has been given; and

(c) the date on which the period for considering the notice may expire;

to the attention of those whom the OFT considers would be affected if the arrangements were carried into effect.

(2) The OFT may by notice to the person who gave the merger notice request him to provide the OFT with such information as the OFT or (as the case may be) the Secretary of State may require for the purpose of carrying out its or (as the case may be) his functions in relation to the merger notice.

(3) A notice under subsection (2) shall state—

(a) the information required;

(b) the period within which the information is to be provided; and

(c) the possible consequences of not providing the information within the stated period and in the authorised or required manner.

(4) A notice by the OFT under subsection (2) shall be given, before the end of the period for considering the merger notice, to the person who gave the merger notice.

(5) The OFT may, at any time before the end of the period for considering any merger notice, reject the notice if—

(a) the OFT suspects that any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who

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gave the notice or any connected person is in any material respect false or misleading;

(b) the OFT suspects that it is not proposed to carry the notified arrangements into effect;

(c) any prescribed information is not given in the merger notice or any information requested by notice under subsection (2) is not provided as required; or

(d) the OFT considers that the notified arrangements are, or if carried into effect would result in, a concentration with a Community dimension within the meaning of the **[**F72EC Merger Regulation**]** .

(6) In this section and section 100 "connected person", in relation to the person who gave a merger notice, means—

(a) any person who, for the purposes of section 127, is associated with him; or

(b) any subsidiary of the person who gave the merger notice or of any person so associated with him.

Textual Amendments

F72 Words in s. 99(5)(d) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(23)**

100 Exceptions to protection given by merger notices

(1) Section 96(3) does not prevent any reference being made to the Commission if—

(a) before the end of the period for considering the merger notice, the OFT rejects the notice under section 99(5);

(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 OFT by such time before the end of that period as may be specified in regulations under section 101;

(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) Subsection (3) applies 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 reference

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under section 22, 33 or 45 as having occurred simultaneously on a particular date; and

(b) section 96(3) does not prevent such a reference in relation to the last of those transactions.

(3) Section 96(3) does not prevent such a reference in relation to any of those transactions which actually occurred less than six months before—

(a) that date; or

(b) the actual occurrence of another of those transactions in relation to which such a reference may be made (whether or not by virtue of this subsection).

(4) In determining for the purposes of subsections (2) and (3) 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.

(5) In this section 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 concerned had been carried into effect at the time when the notice was given.

101 Merger notices: regulations

(1) The Secretary of State may make regulations for the purposes of sections 96 to 100.

(2) The regulations may, in particular—

(a) provide for section 97(1), (2), (3) or (4) or section 100(1)(e) 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 enactment concerned;

(b) provide for the manner in which any merger notice is authorised or required to be rejected or withdrawn, and the time at which any merger notice is to be treated as received or rejected;

(c) provide for the time at which any notice under section 97(7), (8)(b), (11) or (13) is to be treated as received;

(d) provide for the manner in which any information requested by the OFT 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 (including the time at which it is to be treated as provided to the satisfaction of the OFT for the purposes of section 97(6));

(e) provide for the person who gave the merger notice to be informed, in circumstances in which section 97(6) applies—

(i) of the fact that the OFT is satisfied as to the provision of the information requested by the OFT or (as the case may be) of the OFT's decision to cancel the extension; and

(ii) of the time at which the OFT is to be treated as so satisfied or (as the case may be) of the time at which the cancellation is to be treated as having effect;

(f) provide for the person who gave the merger notice to be informed, in circumstances in which section 97(8) applies—

(i) of any decision by the OFT to cancel the extension; and

(ii) of the time at which such a cancellation is to be treated as having effect;

(g) provide for the time at which any fee is to be treated as paid;

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(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 under this section to give a merger notice or a person who has given such a notice.

102 Power to modify sections 97 to 101

The Secretary of State may, for the purposes of determining the effect of giving a merger notice and the action which may be or is to be taken by any person in connection with such a notice, by order modify sections 97 to 101.

General duties in relation to references

103 Duty of expedition in relation to references

(1) In deciding whether to make a reference under section 22 or 33 the OFT shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.

(2) In deciding whether to make a reference under section 45 or 62 the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.

Modifications etc. (not altering text)

C67 S. 103 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(k)(11)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

104 Certain duties of relevant authorities to consult

(1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to be adverse to the interests of a relevant party.

(2) The relevant authority shall, so far as practicable, consult that party about what is proposed before making that decision.

(3) In consulting the party concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.

(4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—

(a) any restrictions imposed by any timetable for making the decision; and

(b) any need to keep what is proposed, or the reasons for it, confidential.

(5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.

(6) In this section—

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"the relevant authority" means the OFT, the Commission or the Secretary of State;

"relevant decision" means—

(a) in the case of the OFT, any decision by the OFT—

(i) as to whether to make a reference under section 22 or 33 or accept undertakings under section 73 instead of making such a reference; or

(ii) to vary under section 37 such a reference;

(b) in the case of the Commission, any decision on the questions mentioned in section 35(1) or (3), 36(1) or (2), 47 or 63; and

(c) in the case of the Secretary of State, any decision by the Secretary of State—

(i) as to whether to make a reference under section 45 or 62; or

(ii) to vary under section 49 or (as the case may be) 64 such a reference; and

"relevant party" means any person who appears to the relevant authority to control enterprises which are the subject of the reference or possible reference concerned.

Modifications etc. (not altering text)

C68 S. 104 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(l)(12)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

[F73 104A Public consultation in relation to media mergers

(1) Subsection (2) applies where the Commission—

(a) is preparing—

(i) a report under section 50 on a reference which specifies a media public interest consideration; or

(ii) a report under section 65 on a reference which specifies a consideration specified in section 58(2A) to (2C); and

(b) is not under a duty to disregard the consideration concerned.

(2) The Commission shall have regard (among other things) to the need to consult the public so far as they might be affected by the creation of the relevant merger situation or special merger situation concerned and so far as such consultation is practicable.

(3) Any consultation of the kind mentioned in subsection (2) may be undertaken by the Commission by consulting such representative sample of the public or section of the public concerned as the Commission considers appropriate.**]**

Textual Amendments

F73 S. 104A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 381**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

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Modifications etc. (not altering text)

C69 S. 104A applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(1)(la) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, **Sch. para. 10(9)** (with transitional provisions and savings in art. 3)
S. 104A applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(12A) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, **Sch. para. 10(12)** (with transitional provisions and savings in art. 3)
(as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

Information and publicity requirements

105 General information duties of OFT and Commission

(1) Where the OFT decides to investigate a matter so as to enable it to decide whether to make a reference under section 22 or 33, or so as to make a report under section 44 or 61, it shall, so far as practicable, take such action as it considers appropriate to bring information about the investigation to the attention of those whom it considers might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.

[F74(1A) Where OFCOM decide to investigate a matter so as to make a report under section 44A or 61A, they shall, so far as practicable, take such action as they consider appropriate to bring information about the investigation to the attention of those who they consider might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.**]**

(2) **[**F75Subsections (1) and (1A) do**]** not apply in relation to arrangements which might result in the creation of a relevant merger situation if a merger notice has been given in relation to those arrangements under section 96.

(3) The OFT shall give the Commission **[**F76or OFCOM**]**—

(a) such information in its possession as the Commission **[**F77or (as the case may be) OFCOM**]** may reasonably require to enable the Commission **[**F77or (as the case may be) OFCOM**]** to carry out its functions under this Part; and

(b) any other assistance which the Commission **[**F77or (as the case may be) OFCOM**]** may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the OFT to give.

[F78(3A) OFCOM shall give the Commission or the OFT—

(a) such information in their possession as the Commission or (as the case may be) the OFT may reasonably require to enable the Commission or (as the case may be) the OFT to carry out its functions under this Part; and

(b) any other assistance which the Commission or (as the case may be) the OFT may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of OFCOM to give.**]**

(4) The OFT shall give the Commission **[**F79or OFCOM**]** any information in its possession which has not been requested by the Commission **[**F80or (as the case may be) OFCOM**]** but which, in the opinion of the OFT, would be appropriate to give to the Commission

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[F80or (as the case may be) OFCOM**]** for the purpose of assisting it in carrying out its functions under this Part.

[F81(4A) OFCOM shall give the Commission or the OFT any information in their possession which has not been requested by the Commission or (as the case may be) the OFT but which, in the opinion of OFCOM, would be appropriate to give to the Commission or (as the case may be) the OFT for the purpose of assisting it in carrying out its functions under this Part.**]**

(5) The OFT **[**F82, OFCOM**]** and the Commission shall give the Secretary of State—

(a) such information in their possession as the Secretary of State may by direction reasonably require to enable him to carry out his functions under this Part; and

(b) any other assistance which the Secretary of State may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the OFT **[**F82, OFCOM**]** or (as the case may be) the Commission to give.

(6) The OFT **[**F83and OFCOM**]** shall give the Secretary of State any information in **[**F84their**]** possession which has not been requested by the Secretary of State but which, in the opinion of the OFT **[**F85or (as the case may be) OFCOM**]** , would be appropriate to give to the Secretary of State for the purpose of assisting him in carrying out his functions under this Part.

(7) The Commission shall have regard to any information given to it under subsection (3) **[**F86, (3A), (4) or (4A)**]** ; and the Secretary of State shall have regard to any information given to him under subsection (5) or (6).

[F87(7A) OFCOM shall have regard to any information given to them under subsection (3) or (4); and the OFT shall have regard to any information given to it under subsection (3A) or (4A).**]**

(8) Any direction given under subsection (5)—

(a) shall be in writing; and

(b) may be varied or revoked by a subsequent direction.

Textual Amendments

F74 S. 105(1A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(2)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F75 Words in s. 105(2) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F76 Words in s. 105(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(4)(a)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F77 Words in s. 105(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(4)(b)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F78 S. 105(3A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(5)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F79 Words in s. 105(4) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(6)(a)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F80 Words in s. 105(4) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(6)(b)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F81 S. 105(4A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(7)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

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F82 Words in s. 105(5) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(8)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F83 Words in s. 105(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(9)(a)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F84 Word in s. 105(6) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(9)(b)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F85 Words in s. 105(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(9)(c)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1

F86 Words in s. 105(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(10)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F87 S. 105(7A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(11)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C70 S. 105 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(m)(13)** (as amended by S.I. 2003/3180, art. 2, **Sch. para. 10(13)** (with transitional provisions and savings in art. 3) and (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

106 Advice and information about references under sections 22 and 33

(1) As soon as reasonably practicable after the passing of this Act, the OFT shall prepare and publish general advice and information about the making of references by it under section 22 or 33.

(2) The OFT may at any time publish revised, or new, advice or information.

(3) As soon as reasonably practicable after the passing of this Act, the Commission shall prepare and publish general advice and information about the consideration by it of references under section 22 or 33 and the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.

(4) The Commission may at any time publish revised, or new, advice or information.

(5) Advice and information published under this section shall be prepared with a view to—

(a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and

(b) indicating how the OFT or (as the case may be) the Commission expects such provisions to operate.

(6) Advice (or information) published by virtue of subsection (1) or (3) may include advice (or information) about the factors which the OFT or (as the case may be) the Commission may take into account in considering whether, and if so how, to exercise a function conferred by this Part.

(7) Any advice or information published by the OFT or the Commission under this section shall be published in such manner as the OFT or (as the case may be) the Commission considers appropriate.

(8) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(9) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.

[F88 106A Advice and information in relation to media mergers

(1) The Secretary of State may prepare and publish general advice and information about the considerations specified in section 58(2A) to (2C).

(2) The Secretary of State may at any time publish revised, or new, advice or information.

(3) Advice or information published under this section shall be prepared with a view to—

(a) explaining the considerations specified in section 58(2A) to (2C) to persons who are likely to be affected by them; and

(b) indicating how the Secretary of State expects this Part to operate in relation to such considerations.

(4) Any advice or information published by the Secretary of State under this section shall be published in such manner as the Secretary of State considers appropriate.

(5) In preparing any advice or information under this section, the Secretary of State shall consult the OFT, OFCOM, the Commission and such other persons as he considers appropriate.**]**

Textual Amendments

F88 S. 106A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 383**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (subject to arts. 3(3), 11)

[F89 106B General advisory functions of OFCOM

(1) OFCOM may, in connection with any case on which they are required to give a report by virtue of section 44A or 61A, give such advice as they consider appropriate to the Secretary of State in relation to—

(a) any report made in such a case by the Commission under section 50 or 65; and

(b) the taking by the Secretary of State of enforcement action under Schedule 7.

(2) OFCOM may, if requested to do so by the Secretary of State, give such other advice as they consider appropriate to the Secretary of State in connection with any case on which they are required to give a report by virtue of section 44A or 61A.

(3) OFCOM shall publish any advice given by them under this section but advice given by them in relation to a report of the Commission under section 50 or 65 or related enforcement action shall not be published before the report itself is published.**]**

Textual Amendments

F89 S. 106B inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 384**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C71 S. 106B applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(1)(ma) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order

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2003 (S.I. 2003/3180), art. 2, **Sch. para. 10(10)** (with transitional provisions and savings in art. 3) (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 106B applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(13A) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, **Sch. para. 10(14)** (with transitional provisions and savings in art. 3))

107 Further publicity requirements

(1) The OFT shall publish—

(a) any reference made by it under section 22 or 33 or any decision made by it not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33);

(b) any variation made by it under section 37 of a reference under section 22 or 33;

(c) such information as it considers appropriate about any decision made by it under section 57(1) to bring a case to the attention of the Secretary of State;

(d) any enforcement undertaking accepted by it under section 71;

(e) any enforcement order made by it under section 72 or 76 or paragraph 2 of Schedule 7;

(f) any variation, release or revocation of such an undertaking or order;

(g) any decision made by it as mentioned in section 76(6)(b); and

(h) any decision made by it to dispense with the requirements of Schedule 10.

(2) The Commission shall publish—

(a) any cancellation by it under section 37(1) of a reference under section 33;

(b) any decision made by it under section 37(2) to treat a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22;

(c) any extension by it under section 39 of the period within which a report under section 38 is to be prepared and published;

(d) any decision made by it to cancel an extension as mentioned in section 39(8)(b);

(e) any decision made by it under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;

(f) any decision made by it that there has been a material change of circumstances as mentioned in subsection (3) of section 41 or there is another special reason as mentioned in that subsection of that section;

(g) any cancellation by it under section 48(1) or 53(1) of a reference under section 45 or any cancellation by it under section 64(1) of a reference under section 62;

(h) any decision made by it under section 49(1) to treat—

(i) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or

(ii) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;

(i) any extension by it under section 51 of the period within which a report under section 50 is to be prepared and published;

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(j) any decision made by it under section 51(8)(b) to cancel such an extension;
(k) any extension by it under section 51 as applied by section 65(3) of the period within which a report under section 65 is to be prepared and published;
(l) any decision made by it under section 51(8)(b) as applied by section 65(3) to cancel such an extension;
(m) any decision made by it under section 64(2) to treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section;
(n) any decision made by it as mentioned in section 76(6)(b);
(o) any enforcement order made by it under section 76 or 81;
(p) any enforcement undertaking accepted by it under section 80;
(q) any variation, release or revocation of such an order or undertaking; and
(r) any decision made by it to dispense with the requirements of Schedule 10.

(3) The Secretary of State shall publish—
(a) any intervention notice or special intervention notice given by him;
(b) any report of the OFT under section 44 or 61 which has been received by him;
[[F90](ba) any report of OFCOM under section 44A or 61A which has been received by him;**]**
(c) any reference made by him under section 45 or 62 or any decision made by him not to make such a reference;
(d) any variation made by him under section 49 of a reference under section 45 or under section 64 of a reference under section 62;
(e) any report of the Commission under section 50 or 65 which has been received by him;
(f) any decision made by him neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule;
(g) any notice given by him under section 56(1);
(h) any enforcement undertaking accepted by him under paragraph 1 of Schedule 7;
(i) any variation or release of such an undertaking;
(j) any decision made by him as mentioned in paragraph 6(6)(b) of Schedule 7; and
(k) any decision made by him to dispense with the requirements of Schedule 10.

(4) Where any person is under a duty by virtue of subsection (1), (2) or (3) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.

(5) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.

(6) Subsections (4) and (5) shall not apply in relation to any information published under subsection (1)(c).

(7) The Secretary of State shall publish his reasons for—
(a) any decision made by him under section 54(2) or 66(2); or
(b) any decision to make an order under section 58(3) or vary or revoke such an order.

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(8) Such reasons may be published after—

(a) in the case of subsection (7)(a), the publication of the decision concerned; and

(b) in the case of subsection (7)(b), the making of the order or of the variation or revocation;

if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.

(9) The Secretary of State shall publish—

(a) the report of the OFT under section 44 **[**F91, and any report of OFCOM under section 44A,**]** in relation to a matter no later than publication of his decision as to whether to make a reference under section 45 in relation to that matter; and

(b) the report of the Commission under section 50 in relation to a matter no later than publication of his decision under section 54(2) in relation to that matter.

(10) The Secretary of State shall publish—

(a) the report of the OFT under section 61 **[**F92, and any report of OFCOM under section 61A,**]** in relation to a matter no later than publication of his decision as to whether to make a reference under section 62 in relation to that matter; and

(b) the report of the Commission under section 65 in relation to a matter no later than publication of his decision under section 66(2) in relation to that matter.

(11) Where the Secretary of State has decided under section 55(2) or 66(6) to accept an undertaking under paragraph 9 of Schedule 7 or to make an order under paragraph 11 of that Schedule, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the Commission's report under section 50 or (as the case may be) 65, before each House of Parliament.

Textual Amendments

F90 S. 107(3)(ba) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 18(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F91 Words in s. 107(9)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 18(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F92 Words in s. 107(10)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 18(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

108 Defamation

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, **[**F93OFCOM,**]** the Commission or the Secretary of State in the exercise of any of their functions under this Part.

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Textual Amendments

F93 Word in s. 108 inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 19** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C72 S. 108 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(n)(14)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

Investigation powers

109 Attendance of witnesses and production of documents etc.

(1) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—

(a) to attend at a time and place specified in the notice; and

(b) to give evidence to the Commission or a person nominated by the Commission for the purpose.

(2) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—

(a) to produce any documents which—

(i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and

(ii) are in that person's custody or under his control; and

(b) to produce them at a time and place so specified and to a person so specified.

(3) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person who carries on any business requiring him—

(a) to supply to the Commission such estimates, forecasts, returns or other information as may be specified or described in the notice; and

(b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.

(4) A notice under this section shall include information about the possible consequences of not complying with the notice.

(5) The Commission or any person nominated by it for the purpose may, for the purpose of any investigation on a reference made to it under this Part, take evidence on oath, and for that purpose may administer oaths.

(6) The person to whom any document is produced in accordance with a notice under this section may, for the purpose of any investigation on a reference made to the Commission under this Part, copy the document so produced.

(7) No person shall be required under this section—

(a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or

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(b) to supply any information which he could not be compelled to supply in evidence in such proceedings.

(8) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.

(9) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

(10) In this section "the court" means—

(a) in relation to England and Wales or Northern Ireland, the High Court; and

(b) in relation to Scotland, the Court of Session.

Modifications etc. (not altering text)

C73 S. 109 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C74 S. 109 applied (20.6.2003) by 2000 c. 38, s. 12(B)(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C75 S. 109 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C76 S. 109 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C77 S. 109 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), s. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C78 S. 109 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35(B)(1)(4)(5) as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C79 S. 109 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 15(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C80 S. 109 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C81 S.109 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C82 S.109 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C83 S.109 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C84 S. 109 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C85 S. 109 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C86 S. 109 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C87 S. 109 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C88 S. 109 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C89 S. 109 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C90 S. 109 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C91 S. 109 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C92 S. 109 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C93 S. 109 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C94 S. 109 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C95 S. 109 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 109 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 109 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 109 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 109 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(a)**, **27(6)(a)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C96 S. 109 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(o)(15)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 109 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 109 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(a)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 109 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(a)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 109 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(a)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
S. 109 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(a)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

C98 S. 109 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(a)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)**(4)** (with art. 3))

C99 S. 109 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 10 para. 10(1)(a)**(12)**; S.I. 2012/2657, art. 2(2)

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110 Enforcement of powers under section 109: general

(1) Where the Commission considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109, it may impose a penalty in accordance with section 111.

(2) The Commission may proceed (whether at the same time or at different times) under subsection (1) and section 39(4) or (as the case may be) 51(4) (including that enactment as applied by section 65(3)) in relation to the same failure.

(3) Where the Commission considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 109(6), it may impose a penalty in accordance with section 111.

(4) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the Commission on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.

(5) A person, subject to subsection (6), commits an offence if he intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under section 109.

(6) A person does not commit an offence under subsection (5) in relation to any act which constitutes a failure to comply with a notice under section 109 if the Commission has proceeded against that person under subsection (1) above in relation to that failure.

(7) A person who commits an offence under subsection (5) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

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

(8) The Commission shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (5) if that person has been found guilty of that offence.

(9) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 39(4) or 51(4) (including that enactment as applied by section 65(3)), the Commission shall have regard to the statement of policy which was most recently published under section 116 at the time when the failure concerned or (as the case may be) the obstruction or delay concerned occurred.

(10) The reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

Modifications etc. (not altering text)

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

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C100 S. 110 applied (with modifications) (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C101 S. 110 applied (with modifications) (20.6.2003) by 1991 c. 56, s. 14B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C102 S. 110 applied (with modifications) (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C103 S. 110 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C104 S. 110 applied (with modifications) (20.6.2003.) by 1989 c. 29, s. 14A(11F)(11G)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C105 S. 110 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 12B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C106 S. 110 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C107 S. 110 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 26A(11F)(11G)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C108 S. 110 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 24B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C109 S. 110 applied (with modifications) (20.6.2003) by 1986 c. 31, s. 44B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C110 S. 110 applied (with modifications) (20.6.2003) by 1984 c. 12, s. 13B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C111 S. 110 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(6)(7)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C112 S. 110 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C113 S. 110 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(6)(7)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C114 S. 110 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C115 S. 110 applied (with modifications) (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C116 S. 110 applied (with modifications) (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C117 S. 110 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 15(2D)(2E)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C118 S. 110 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(2)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C119 S.110 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2D)(2E)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C120 S. 110 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C121 S. 110 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C122 S. 110 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11B(1)(2) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 110 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(p)(16)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 110 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 110 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(b)(2)(3)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
S. 110 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(b)(18)(19)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 110 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(b)(15)(16)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 110 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(b)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
S. 110 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17M(1)(2) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 110 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17Q(6)(7) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 110 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 110 applied (with modifications) (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(b)(2)**, **27(6)(b)(7)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C123 S. 110 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(b)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)**(4)** (with art. 3))

C124 S. 110 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 10 para. 10(1)(b)(2)-(4)**(12)**; S.I. 2012/2657, art. 2(2)

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111 Penalties

(1) A penalty imposed under section 110(1) or (3) shall be of such amount as the Commission considers appropriate.

(2) The amount may, in the case of a penalty imposed under section 110(1), be a fixed amount, an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.

(3) The amount shall, in the case of a penalty imposed under section 110(3), be a fixed amount.

(4) No penalty imposed under section 110(1) shall—

(a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;

(b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify; and

(c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.

(5) In imposing a penalty by reference to a daily rate—

(a) no account shall be taken of any days before the service of the notice under section 112 on the person concerned; and

(b) unless the Commission determines an earlier date (whether before or after the penalty is imposed), the amount payable shall cease to accumulate at the beginning of—

(i) the day on which the requirement of the notice concerned under section 109 is satisfied or (as the case may be) the obstruction or delay is removed; or

(ii) if earlier, the day on which the report of the Commission on the reference concerned is published (or, in the case of a report under section 50 or 65, given) or, if no such report is published (or given) within the period permitted for that purpose by this Part, the latest day on which the report may be published (or given) within the permitted period.

(6) No penalty imposed under section 110(3) shall exceed such amount as the Secretary of State may by order specify.

(7) An order under subsection (4) or (6) shall not specify—

(a) in the case of a fixed amount, an amount exceeding £30,000;

(b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and

(c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.

(8) Before making an order under subsection (4) or (6) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

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Modifications etc. (not altering text)

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

C125 S. 111 applied (with modifications) (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 213(5)** (with art. 3, Sch. 2 para. 2))

C126 S. 111 applied (with modifications) (20.6.2003) by 1991 c. 56, s. 14B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(5)** (with art. 3, Sch. 2 para. 2))

C127 S. 111 applied (with modifications) (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C128 S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(5)** (with art. 3, Sch. 2 para. 2))

C129 S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 14A(11F)(11H)-(11J) (as inserted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C130 S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 12B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C131 S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 51(5)** (with art. 3, Sch. 2 para. 2))

C132 S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 26A(11F)(11H)-(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C133 S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 24B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C134 S. 111 applied (with modifications) (20.6.2003) by 1986 c. 31, s. 44B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C135 S. 111 applied (with modifications) (20.6.2003) by 1984 c. 12, s. 13B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C136 S. 111 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(6)(8)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C137 S. 111 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with

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art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 150(5)** (with art. 3, Sch. 2 para. 2))

C138 S. 111 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(6)(8))(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C139 S. 111 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C140 S. 111 applied (with modifications) (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 218(5)** (with art. 3, Sch. 2 para. 2))

C141 S. 111 applied (with modifications) (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(3)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C142 S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2D)(2F)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C143 S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(3)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 111(5)** (with art. 3, Sch. 2 para. 2))

C144 S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2D)(2F)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C145 S.111 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C146 S. 111 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11B(1)(3) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 36(6)** (with art. 3, Sch. 2 para. 2))

C147 S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(5)** (with art. 3, Sch. 2 para. 2))

S. 111 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(q)(17)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

S. 111 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)

S. 111 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(c)(2)(3)(5)(6)}; S.R. 2004/71, **art. 2**, Sch. (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 243(5)** (with art. 3, Sch. 2 para. 2))

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S. 111 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(c)(18)(19)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 111 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(c)(15)(16)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 111 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(c)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
S. 111 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17M(1)(3) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 78(5)** (with art. 3, Sch. 2 para. 2))
S. 111 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17Q(6)(8) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 111 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 111 applied (with modifications) (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(c)(3)**, **27(6)(c)(8)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 250(5)** (with art. 3, Sch. 2 para. 2))

C148 S. 111 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(c)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)**(4)** (with art. 3))

C149 S. 111 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 10 para. 10(1)(c)**(2)(5)-(7)(12); S.I. 2012/2657, art. 2(2) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(8)** (with art. 3, Sch. 2 para. 2))

112 Penalties: main procedural requirements

(1) As soon as practicable after imposing a penalty under section 110(1) or (3), the Commission shall give notice of the penalty.

(2) The notice shall state—

(a) that the Commission has imposed a penalty on the person concerned;

(b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;

(c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;

(d) the failure or (as the case may be) the obstruction or delay which the Commission considers gave it the power to impose the penalty;

(e) any other facts which the Commission considers justify the imposition of a penalty and the amount or amounts of the penalty;

(f) the manner in which, and place at which, the penalty is required to be paid to the Commission;

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(g) the date or dates, no earlier than the end of the relevant period beginning with the date of service of the notice on the person concerned, by which the penalty or (as the case may be) different portions of it are required to be paid;

(h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and

(i) that the person concerned has the right to apply under subsection (3) below or to appeal under section 114 and the main details of those rights.

(3) The person against whom the penalty was imposed may, within 14 days of the date of service on him of a notice under subsection (1), apply to the Commission for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.

(4) A notice under this section shall be given by—

(a) serving a copy of the notice on the person on whom the penalty was imposed; and

(b) publishing the notice.

(5) In this section "relevant period" means the period of 28 days mentioned in subsection (3) of section 114 or, if another period is specified by the Secretary of State under that subsection, that period.

Modifications etc. (not altering text)

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

C150 S. 112 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C151 S. 112 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C152 S. 112 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C153 S. 112 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C154 S. 112 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C155 S. 112 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C156 S. 112 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C157 S. 112 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C158 S. 112 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C159 S. 112 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C160 S. 112 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C161 S. 112 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

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C162 S. 112 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C163 S. 112 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C164 S. 112 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C165 S. 112 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C166 S. 112 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C167 S. 112 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 15(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C168 S. 112 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C169 S. 112 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C170 S. 112 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C171 S. 112 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C172 S. 112 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
S. 112 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 112 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 112 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 112 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(d)**, **27(6)(d)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C173 S. 112 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(r)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 112 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 112 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), Sch. 2 para. 5(1)(d)(5)(6); S.R. 2004/71, **art. 2**, Sch.
S. 112 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(d)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 36(2); S.R. 2004/71, **art. 2**, Sch.))
S. 112 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(d)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 37(2); S.I. 2004/71, **art. 2**, Sch.))
S. 112 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(d)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C174 S. 112 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(d)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))

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C175 S. 112 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 10 para. 10(1)(d)(2)(8)(12)**; S.I. 2012/2657, art. 2(2)

113 Payments and interest by instalments

(1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).

(2) Where an application has been made under section 112(3), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.

(3) If a portion of a penalty has not been paid by the date required for it, the Commission may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.

(4) Any sums received by the Commission in or towards the payment of a penalty, or interest on a penalty, shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

C176 S. 113 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C177 S. 113 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C178 S. 113 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C179 S. 113 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C180 S. 113 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C181 S. 113 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C182 S. 113 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C183 S. 113 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C184 S. 113 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C185 S. 113 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C186 S. 113 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C187 S. 113 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C188 S. 113 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C189 S. 113 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C190 S. 113 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C191 S. 113 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C192 S. 113 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(4)(5) as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C193 S. 113 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 15(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C194 S. 113 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C195 S. 113 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C196 S. 113 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C197 S. 113 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C198 S. 113 applied (20.6.2003) by 1980 c. 21, s. 11B(1)(2) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 113 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 113 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 113 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 113 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(e)**, **27(6)(e)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C199 S. 113 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(s)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 113 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 113 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(e)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
S. 113 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(e)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 113 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(e)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 113 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(e)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C200 S. 113 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(e)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))

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C201 S. 113 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (12), s. 306(4), **Sch. 10 para. 10(1)(e)**; S.I. 2012/2657, art. 2(2)

114 Appeals in relation to penalties

(1) This section applies if a person on whom a penalty is imposed under section 110(1) or (3) is aggrieved by—

(a) the imposition or nature of the penalty;

(b) the amount or amounts of the penalty; or

(c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.

(2) The person aggrieved may apply to the Competition Appeal Tribunal.

(3) If a copy of the notice under section 112(1) was served on the person on whom the penalty was imposed, the application to the Competition Appeal Tribunal shall, subject to subsection (4), be made within—

(a) the period of 28 days starting with the day on which the copy was served on the person concerned; or

(b) such other period as the Secretary of State may by order specify.

(4) If the application relates to a decision of the Commission on an application by the person on whom the penalty was imposed under section 112(3), the application to the Competition Appeal Tribunal shall be made within—

(a) the period of 28 days starting with the day on which the person concerned is notified of the decision; or

(b) such other period as the Secretary of State may by order specify.

(5) On an application under this section, the Competition Appeal Tribunal may—

(a) quash the penalty;

(b) substitute a penalty of a different nature or of such lesser amount or amounts as the Competition Appeal Tribunal considers appropriate; or

(c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the Commission an alternative date or dates;

if it considers it appropriate to do so.

(6) The Competition Appeal Tribunal shall not substitute a penalty of a different nature under subsection (5)(b) unless it considers that the person on whom the penalty is imposed will, or is likely to, pay less under the substituted penalty than he would have paid under the original penalty.

(7) Where an application has been made under this section—

(a) the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with; and

(b) the Commission may agree to reduce the amount or amounts of the penalty in settlement of the application.

(8) Where the Competition Appeal Tribunal substitutes a penalty of a different nature or of a lesser amount or amounts it may require the payment of interest on the substituted penalty at such rate or rates, and from such date or dates, as it considers appropriate.

(9) Where the Competition Appeal Tribunal specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application

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under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.

(10) An appeal lies to the appropriate court—

(a) on a point of law arising from a decision of the Tribunal in proceedings under this section; or

(b) from a decision of the Tribunal in such proceedings as to the amount or amounts of a penalty.

(11) An appeal under subsection (10)—

(a) may be brought by a party to the proceedings before the Tribunal; and

(b) requires the permission of the Tribunal or the appropriate court.

(12) In this section "the appropriate court" means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session.

Modifications etc. (not altering text)

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

C202 S. 114 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C203 S. 114 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C204 S. 114 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C205 S. 114 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C206 S. 114 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C207 S. 114 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C208 S. 114 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C209 S. 114 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C210 S. 114 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C211 S. 114 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C212 S. 114 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C213 S. 114 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C214 S. 114 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C215 S. 114 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C216 S. 114 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C217 S. 114 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C218 S. 114 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), art. 35B(1)(4)(5) as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C219 S. 114 applied (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C220 S. 114 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C221 S. 114 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C222 S.114 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C223 S. 114 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C224 S. 114 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 114 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 114 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 114 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 114 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(f)**, **27(6)(f)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C225 S. 114 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(t)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 114 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 114 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(f)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
S. 114 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(f)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 114 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(f)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 114 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(f)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C226 S. 114 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(f)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))

C227 S. 114 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (9), (12), s. 306(4), **Sch. 10 para. 10(1)(f)**; S.I. 2012/2657, art. 2(2)

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115 Recovery of penalties

Where a penalty imposed under section 110(1) or (3), or any portion of such a penalty, has not been paid by the date on which it is required to be paid and—

(a) no application relating to the penalty has been made under section 114 during the period within which such an application may be made, or

(b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the Commission may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the Commission.

Modifications etc. (not altering text)

C97 Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))

C228 S. 115 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C229 S. 115 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C230 S. 115 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C231 S. 115 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C232 S. 115 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C233 S. 115 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C234 S. 115 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C235 S. 115 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C236 S. 115 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C237 S. 115 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C238 S. 115 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C239 S. 115 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C240 S. 115 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C241 S. 115 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C242 S. 115 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C243 S. 115 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

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C244 S. 115 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), art. 35B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C245 S. 115 applied (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C246 S. 115 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C247 S. 115 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C248 S. 115 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C249 S. 115 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C250 S. 115 applied (20.6.2003) by 1980 c. 21, s. 11B(1)(2) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
S. 115 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 115 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 115 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 115 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(g)**, **27(6)(g)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C251 S. 115 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(u)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 115 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 115 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), Sch. 2 para. 5(1)(g)(5)(6); S.R. 2004/71, **art. 2**, Sch.
S. 115 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(g)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 36(2); S.R. 2004/71, **art. 2**, Sch.)
S. 115 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(g)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 37(2); S.R. 2004/71, **art. 2**, Sch.)
S. 115 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(g)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C252 S. 115 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(g)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))

C253 S. 115 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (10), (12), s. 306(4), **Sch. 10 para. 10(1)(g)**; S.I. 2012/2657, art. 2(2)

116 Statement of policy

(1) The Commission shall prepare and publish a statement of policy in relation to the enforcement of notices under section 109.

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(2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 110(1) or (3).

(3) The Commission may revise its statement of policy and, where it does so, it shall publish the revised statement.

(4) The Commission shall consult such persons as it considers appropriate when preparing or revising its statement of policy.

Modifications etc. (not altering text)

C254 S. 116 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C255 S. 116 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C256 S. 116 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C257 S. 116 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C258 S. 116 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C259 S. 116 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C260 S. 116 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C261 S. 116 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C262 S. 116 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C263 S. 116 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C264 S. 116 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C265 S. 116 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C266 S. 116 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C267 S. 116 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C268 S. 116 applied (20.6.2003) by 2000 c. 26, s. 15B (1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C269 S. 116 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C270 S. 116 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), art. 35B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C271 S. 116 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C272 S. 116 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C273 S. 116 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C274 S. 116 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C275 S. 116 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 116 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 116 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
S. 116 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**
S. 116 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(h)**, **27(6)(h)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C276 S. 116 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(v)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 116 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 116 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(h)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
S. 116 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(h)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 116 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(h)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 116 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(a)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C277 S. 116 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(h)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))

C278 S. 116 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(2)(4), **Sch. 10 para. 10(1)(h)(2)(11)(12)**; S.I. 2012/2657, art. 2(2)

117 False or misleading information

(1) A person commits an offence if—

(a) he supplies any information to the OFT, **[**F94OFCOM,**]** the Commission or the Secretary of State in connection with any of their functions under this Part;

(b) the information is false or misleading in a material respect; and

(c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

(2) A person commits an offence if he—

(a) supplies any information to another person which he knows to be false or misleading in a material respect; or

(b) recklessly supplies any information to another person which is false or misleading in a material respect;

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knowing that the information is to be used for the purpose of supplying information to the OFT, **[**[F95]OFCOM,**]** the Commission or the Secretary of State in connection with any of their functions under this Part.

(3) A person who commits an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

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

Textual Amendments

F94 Word in s. 117(1)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 20(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F95 Word in s. 117(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 20(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C279 S. 117 modified (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 23(7) (as substituted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 22(5)**; S.I. 2003/1397, **art. 2(1)**, Sch.)

C280 S. 117 modified (20.6.2003) by 1993 c. 43, s. 67(9) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 21(7)**; S.I. 2003/1397, **art. 2(1)**, Sch.)

C281 S. 117 modified (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 46(6A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 20(5)**; S.I. 2003/1397, **art. 2(1)**, Sch.)

C282 S. 117 modified (20.6.2003) by 1991 c. 56, s. 31(8A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 19(6)**; S.I. 2003/1397, **art. 2(1)**, Sch.)

C283 S. 117 modified (20.6.2003) by 1989 c. 29, s. 43(6A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 18(5)**; S.I. 2003/1397, **art. 2(1)**, Sch.)

C284 S. 117 modified (20.6.2003) by 1986 c. 44, s. 36A(8) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 17(6)**; S.I. 2003/1397, **art. 2(1)**, Sch.)

C285 S. 117 modified (20.6.2003) by 1984 c. 12, s. 50(6A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 16(5)**; S.I. 2003/1397, **art. 2(1)**, Sch.)
S. 117 modified (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **29(10)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C286 S. 117 modified (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), **ss. 370(10)**, 411 (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)**

C287 S. 117 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(9)-(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 94(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C288 S. 117 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 88(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C289 S. 117 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(9)-(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

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C290 S. 117 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C291 S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2G)-(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 81(13)(c)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C292 S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(4)-(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 81(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C293 S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2G)-(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C294 S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 72(1)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C295 S. 117 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C296 S. 117 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 26(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))

C297 S. 117 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11C(1) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

C298 S. 117 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))

S. 117 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(w)(18)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

S. 117 applied (with modifications) (20.6.2003) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 2, {Sch. 2 para. 5(4)(6)}; S.R. 2003/203, **art. 2**, Sch.

S. 117 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5**, **10(3)-(7)**

C299 S. 117 applied (20.6.2003) by S.I. 1990/1715, reg. 5 (as inserted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 17(5)**)

C300 S. 117 applied (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), **ss. 193(8)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)**

C301 S. 117 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(i)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)**(4)** (with art. 3))

C302 S. 117 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (12), s. 306(4), **Sch. 10 para. 10(1)(i)**; S.I. 2012/2657, art. 2(2)

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

C303 S. 117 modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 73(6)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Reports

118 Excisions from reports

(1) Subsection (2) applies where the Secretary of State is under a duty to publish—

(a) a report of the OFT under section 44 or 61;

[F96(aa) a report of OFCOM under section 44A or 61A;**]** or

(b) a report of the Commission under section 50 or 65.

(2) The Secretary of State may exclude a matter from the report concerned if he considers that publication of the matter would be inappropriate.

(3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.

(4) The body which has prepared the report shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).

(5) References in sections 38(4) and 107(11) to the giving or laying of a report of the Commission shall be construed as references to the giving or laying of the report as published.

Textual Amendments

F96 S. 118(1)(aa) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 21** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C304 S. 118 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(x)(19)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

119 Minority reports of Commission

(1) Subsection (2) applies where, on a reference to the Commission under this Part, a member of a group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41), disagrees with any decisions contained in the report of the Commission under this Part as the decisions of the Commission.

(2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Modifications etc. (not altering text)

C305 S. 119 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(y)(20)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

[F97 Further provision about media mergers

Textual Amendments

F97 S. 119A and cross-heading inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 385**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

119A Other general functions of OFCOM in relation to this Part

(1) OFCOM have the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of their functions under this Part.

(2) That function is to be carried out with a view to (among other things) ensuring that OFCOM have sufficient information to take informed decisions and to carry out their other functions effectively.

(3) In carrying out that function OFCOM may carry out, commission or support (financially or otherwise) research.

(4) Section 3 of the Communications Act 2003 (general duties of OFCOM) shall not apply in relation to functions of OFCOM under this Part.

Modifications etc. (not altering text)

C306 S. 119A applied (with modifications) (29.12.2003) by S.I. 2003/1592, Sch. 3 para. 1(1)(ya) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, **Sch. para. 10(11)** (with art. 3)
S. 119A applied (with modifications) (29.12.2003) by S.I. 2003/1592, Sch. 3 para. 1(20A) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, **Sch. para. 10(15)** (with art. 3) (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

[F98 119B Monitoring role for OFT in relation to media mergers

(1) The OFT has the function of obtaining, compiling and keeping under review information about matters which may be relevant to the Secretary of State in deciding whether to give a special intervention notice mentioning a consideration specified in section 58(2A) to (2C).

(2) That function is to be carried out with a view to (among other things) ensuring that the Secretary of State is aware of cases where, in the opinion of the OFT, he might wish to consider giving such a notice.

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(3) That function does not extend to obtaining, compiling or keeping under review information with a view to carrying out a detailed analysis in each case of the operation in relation to that case of the consideration specified in section 58(2A) to (2C).**]]**

Textual Amendments

F98 S. 119B inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 386**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Miscellaneous

120 Review of decisions under Part 3

(1) Any person aggrieved by a decision of the OFT, **[**[F99]OFCOM,**]** the Secretary of State or the Commission under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation may apply to the Competition Appeal Tribunal for a review of that decision.

(2) For this purpose "decision"—

(a) does not include a decision to impose a penalty under section 110(1) or (3); but

(b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.

(3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.

(4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.

(5) The Competition Appeal Tribunal may—

(a) dismiss the application or quash the whole or part of the decision to which it relates; and

(b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.

(6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.

(7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.

(8) In this section—

"the appropriate court" means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and

"Tribunal rules" has the meaning given by section 15(1).

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Textual Amendments

F99 Word in s. 120(1) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 22** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C307 S. 120 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(z)(21)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C308 S. 120(6)-(8) applied (1.9.2004) by Energy Act 2004 (c. 20), ss. 141, 198(2), **Sch. 18 para. 15**; S.I. 2004/2184, **art. 2(2)**, Sch. 2

C309 S. 120(6)-(8) applied (N.I.) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), **reg. 28**

C310 S. 120(6)-(8) applied (N.I.) (prosp.) by The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I 2007/913 (N.I. 7)), arts. 1, 5, {Sch. 1 para. 15}

C311 S. 120(6)-(8) applied (N.I.) (15.4.2011) by The Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 1, **Sch. 1 para. 14**

121 Fees

(1) The Secretary of State may by order require the payment to him or the OFT of such fees as may be prescribed by the order in connection with the exercise by the Secretary of State, the OFT **[**[F100], OFCOM**]** and the Commission of their functions under or by virtue of this Part, [F101]. . . and sections 32 to 34 of, and Schedule 4ZA to, the Water Industry Act 1991 (c. 56).

(2) An order under this section may, in particular, provide for fees to be payable—

(a) in respect of a merger notice;**[**[F102] or**]**

(b) [F103]. . . . . .

(c) on the occurrence of any event specified in the order.

(3) The events that may be specified in an order under this section by virtue of subsection (2)(c) include, in particular—

(a) the decision by the OFT in relation to a possible reference under section 22 or 33 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(b) the decision by the Secretary of State in relation to a possible reference under section 45 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;

(c) the decision by the Secretary of State in relation to a possible reference under section 62 that—

(i) it is or may be the case that a special merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation; and

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(ii) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and

(d) the decision by the OFT in relation to a possible reference under section 32 of the Act of 1991 that it is or may be the case that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises or that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) of that section.

(4) An order under this section may, in particular, contain provision—

(a) for ascertaining the persons by whom fees are payable;

(b) specifying whether any fee is payable to the Secretary of State or the OFT;

(c) for the amount of any fee to be calculated by reference to matters which may include—

(i) F104 . . . . . .

(ii) F105. . . , the value of the turnover of the enterprises concerned;

(d) as to the time when any fee is to be paid; and

(e) for the repayment by the Secretary of State or the OFT of the whole or part of any fee in specified circumstances.

(5) For the purposes of subsection (4)(c)(ii) the turnover of an enterprise shall be determined in accordance with such provisions as may be specified in an order under this section.

(6) Provision made by virtue of subsection (5) may, in particular, include provision—

(a) as to the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;

(b) as to the date or dates by reference to which an enterprise's turnover is to be determined;

(c) restricting the turnover to be taken into consideration to turnover which has a connection of a particular description with the United Kingdom.

(7) An order under this section may, in particular, in connection with provisions of the kind mentioned in subsection (5) make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (6)).

(8) In determining the amount of any fees to be prescribed by an order under this section, the Secretary of State may take into account all costs incurred by him and by the OFT in respect of the exercise by him, the OFT **[**F106, OFCOM**]** and the Commission of their respective functions under or by virtue of this Part F107. . . and sections 32 to 34 of, and Schedule 4ZA to, the Act of 1991.

(9) Fees paid to the Secretary of State or the OFT under this section shall be paid into the Consolidated Fund.

(10) F108 . . . . . .

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Textual Amendments

F100 Word in s. 121(1) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 23(2)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F101 Words in s. 121(1) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406, 411(2)(3), Sch. 16 para. 23(2)(b), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Note 1Sch. 19); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F102 Word in s. 121(2)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 23(3)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F103 S. 121(2)(b) and word repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406, 411(2)(3), Sch. 16 para. 23(3)(b), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F104 S. 121(4)(c)(i) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406, 411(2)(3), Sch. 16 para. 23(4)(a)(b), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F105 Words in s. 121(4)(c)(ii) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406, 411(2)(3), Sch. 16 para. 23(4)(c), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F106 Word in s. 121(8) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 23(5)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F107 Words in s. 121(8) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406, 411(2)(3), Sch. 16 para. 23(5)(b), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F108 S. 121(10) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 406, 411(2)(3), Sch. 16 para. 23(6), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

122 Primacy of [F20EU] law

(1) Advice and information published by virtue of section 106(1) or (3) shall include such advice and information about the effect of **[**F20EU**]** law, and anything done under or in accordance with it, on the provisions of this Part as the OFT or (as the case may be) the Commission considers appropriate.

(2) Advice and information published by the OFT by virtue of section 106(1) shall, in particular, include advice and information about the circumstances in which the duties of the OFT under sections 22 and 33 do not apply as a result of the **[**F109EC Merger Regulation**]** or anything done under or in accordance with them.

(3) The duty or power to make a reference under section 22 or 45(2) or (3), and the power to give an intervention notice under section 42, shall apply in a case in which the relevant enterprises ceased to be distinct enterprises at a time or in circumstances not falling within section 24 if the condition mentioned in subsection (4) is satisfied.

(4) The condition mentioned in this subsection is that, because of the **[**F109EC Merger Regulation**]** or anything done under or in accordance with them, the reference, or (as the case may be) the reference under section 22 to which the intervention notice relates, could not have been made earlier than 4 months before the date on which it is to be made.

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(5) Where the duty or power to make a reference under section 22 or 45(2) or (3), or the power to give an intervention notice under section 42, applies as mentioned in subsection (3), references in this Part to the creation of a relevant merger situation shall be construed accordingly.

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F109 Words in s. 122(2)(4) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(24)**

123 Power to alter share of supply test

(1) The Secretary of State may by order amend or replace the conditions which determine for the purposes of this Part whether a relevant merger situation has been created.

(2) The Secretary of State shall not exercise his power under subsection (1)—

(a) to amend or replace the conditions mentioned in paragraphs (a) and (b) of subsection (1) of section 23;

(b) to amend or replace the condition mentioned in paragraph (a) of subsection (2) of that section.

(3) In exercising his power under subsection (1) to amend or replace the condition mentioned in paragraph (b) of subsection (2) of section 23 or any condition which for the time being applies instead of it, the Secretary of State shall, in particular, have regard to the desirability of ensuring that any amended or new condition continues to operate by reference to the degree of commercial strength which results from the enterprises concerned having ceased to be distinct.

(4) Before making an order under this section the Secretary of State shall consult the OFT and the Commission.

(5) An order under this section may provide for the delegation of functions to the decision-making authority.

Other

124 Orders and regulations under Part 3

(1) Any power of the Secretary of State to make an order or regulations under this Part shall be exercisable by statutory instrument.

(2) Any power of the Secretary of State to make an order or regulations under this Part—

(a) may be exercised so as to make different provision for different cases or different purposes; and

(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.

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(3) The power of the Secretary of State under section 34 **[**F110, 59(6A)**]** or 123 (including that power as extended by subsection (2) above) may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.

(4) The power of the Secretary of State under section 40(8), **[**F111 44(11),**]** 52(8) (including that enactment as applied by section 65(3)), 58(3), 68 or 102 as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.

(5) An order made by the Secretary of State under section 28 (including that enactment as applied by section 42(5), 59(5) and 67(7)), 40(8), 52(8) (including that enactment as applied by section 65(3)), 111(4) or (6), 114(3)(b) or (4)(b) or 121 or Schedule 7 shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) No order shall be made by the Secretary of State under section 34, **[**F112 44(11), 59(6A),**]** 68, 102, 123 or 128(6) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

(7) An order made by the Secretary of State under section 58(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.

(8) In calculating the period of 28 days mentioned in subsection (7), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(9) If an order made by the Secretary of State ceases to have effect by virtue of subsection (7), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.

(10) If, apart from this subsection, an order made by the Secretary of State under section 58(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

Textual Amendments

F110 Word in s. 124(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 24(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F111 Word in s. 124(4) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 24(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F112 Words in s. 124(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 24(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C312 S. 124 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(aa)(22)** (as amended (1.4.2014)

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

125 Offences by bodies corporate

(1) Where an offence under this Part 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—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies 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.

(3) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he as well as the partnership commits the offence and shall be liable to be proceeded against and punished accordingly.

(4) In subsection (3) "partner" includes a person purporting to act as a partner.

Modifications etc. (not altering text)

C313 S. 125 applied (20.6.2003) by 1980 c. 21, s. 11B(2) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
S. 125 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(bb)(23)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
S. 125 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **art. 5**
S. 125 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **art. 10(3)-(7)**

C314 S. 125 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 10 para. 10(1)(j)(2)(12)**; S.I. 2012/2657, art. 2(2)

126 Service of documents

(1) Any document required or authorised by virtue of this Part to be served on any person may be served—

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;

(b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body;

(c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or

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(d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.

(2) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—

(a) in the case of service on a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;

(c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(4) Subsection (5) applies if a person to be served under this Part with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined under subsection (2)) as the one at which he or someone on his behalf will accept documents of the same description as that document.

(5) In relation to that document, that address shall be treated as his proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section, instead of that determined under subsection (2).

(6) Any notice in writing or other document required or authorised by virtue of this Part to be served on any person may be served on that person by transmitting the text of the notice or other document to him by means of **[**F113an electronic communications network**]** or by other means but while in electronic form provided the text is received by that person in legible form and is capable of being used for subsequent reference.

(7) This section does not apply to any document if rules of court make provision about its service.

(8) In this section references to serving include references to similar expressions (such as giving or sending).

Textual Amendments

F113 Words in s. 126(6) substituted (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(2)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

Modifications etc. (not altering text)

C315 S. 126 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(cc)(24)** (as amended (1.4.2014)

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by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

127 Associated persons

(1) Associated persons, and any bodies corporate which they or any of them control, shall be treated as one person—

(a) for the purpose of deciding under section 26 whether any two enterprises have been brought under common ownership or common control;

[F114(aa) for the purposes of section 58(2C); and**]**

(b) for the purpose of determining what activities are carried on by way of business by any one person so far as that question arises in connection with paragraph 13(2) of Schedule 8.

(2) Subsection (1) shall not exclude from section 26 any case which would otherwise fall within that section.

(3) A reference under section 22, 33, 45 or 62 (whether or not made by virtue of this section) may be framed so as to exclude from consideration, either altogether or for a specified purpose or to a specified extent, any matter which, apart from this section, would not have been taken into account on that reference.

(4) For the purposes of this section—

(a) any individual and that individual's spouse **[**F115, civil partner**]** or partner and any relative, or spouse or partner of a relative, of that individual or of that individual's spouse **[**F115, civil partner**]** or partner;

(b) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;

(c) persons carrying on business in partnership and the spouse **[**F115, civil partner**]** or partner and relatives of any of them; or

(d) two or more persons acting together to secure or exercise control of a body of persons corporate or unincorporate or to secure control of any enterprise or assets,

shall be regarded as associated with one another.

(5) The reference in subsection (1) to bodies corporate which associated persons control shall be construed in accordance with section 26(3) and (4).

(6) In this section "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild of any person, or anyone adopted by a person, whether legally or otherwise, as his child being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a spouse **[**F115, civil partner**]** or partner shall include a former spouse **[**F115, civil partner**]** or partner.

Textual Amendments

F114 S. 127(1)(aa) substituted (29.12.2003) for word by Communications Act 2003 (c. 21), **ss. 375(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F115 Words in s. 127(4)(a)(c)(6) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 168**; S.I. 2005/3175, **art. 2**, Sch. 1

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
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Modifications etc. (not altering text)

C316 S. 127 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(dd)(25)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

C317 S. 127 applied (20.6.2003) by The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003 (S.I. 2003/1370), art. 2, **Sch. para. 7**
S. 127 applied (29.12.2004) by The Water Mergers (Determination of Turnover) Regulations 2004 (S.I. 2004/3206), reg. 2(b), **Sch. para. 7**

128 Supply of services and market for services etc.

(1) References in this Part to the supply of services shall be construed in accordance with this section; and references in this Part to a market for services and other related expressions shall be construed accordingly.

(2) The supply of services does not include the provision of services under 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.

(3) The supply of services includes—

(a) performing for gain or reward any activity other than the supply of goods;

(b) rendering services to order;

(c) the provision of services by making them available to potential users.

(4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

(5) The supply of services includes making arrangements by means of a relevant agreement (within the meaning of **[**F116paragraph 29 of Schedule 2 to the Telecommunications Act 1984**]** for sharing the use of telecommunications apparatus.

(6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State may by order specify.

Textual Amendments

F116 Words in s. 128(5) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C318 S. 128 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(ee)(26)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

129 Other interpretation provisions

(1) In this Part, unless the context otherwise requires—

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"action" includes omission; and references to the taking of action include references to refraining from action;

"agreement" means any agreement or arrangement, in whatever way and 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;

"change of circumstances" includes any discovery that information has been supplied which is false or misleading in a material respect;

"**[**[F20]EU**]** law" means—

(a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and

(b) all the remedies and procedures from time to time provided for by or under the Community Treaties;

"consumer" means any person who is—

(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;

"customer" includes a customer who is not a consumer;

[[F117]"the EC Merger Regulation" means Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings;**]**

"enactment" includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;

"enterprise" means the activities, or part of the activities, of a business;

[[F118]"the European Merger Regulations" means Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997;**]**

"goods" includes buildings and other structures, and also includes ships, aircraft and hovercraft;

"modify" includes amend or repeal;

"notice" means notice in writing;

"price" includes any charge or fee (however described);

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation;

"subsidiary" has the meaning given by **[**[F119]section 1159 of the Companies Act 2006**]** (c. 6);

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"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;

[[F120]"the UK financial system" means the financial system in the United Kingdom;**]** and

"United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or

(c) a British protected person within the meaning of that Act.

(2) For the purposes of this Part any two bodies corporate are interconnected if—

(a) one of them is a body corporate of which the other is a subsidiary; or

(b) both of them are subsidiaries of one and the same body corporate;

and in this Part "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.

(3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.

(4) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as he considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F117 S. 129(1): definition of "the EC Merger Regulation" inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(25)(b)**

F118 S. 129(1): definition of "the European Merger Regulations" ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(25)(a)**

F119 Words in s. 129(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 199(3)** (with art. 10)

F120 Words in s. 129(1) inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 (S.I. 2008/2645), arts. 1(1), **3(1)**

Modifications etc. (not altering text)

C319 S. 129 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(ff)(27)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

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130 Index of defined expressions

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

Expression	*Provision of this Act*
Action (and the taking of action)	Section 129(1)
Adverse public interest finding	Section 54(3)
Agreement	Section 129(1)
Anti-competitive outcome	Section 35(2)
[F121Broadcasting	Section 44(9)**]**
Business (and carrying on business)	Section 129(1) and (3)
Change of circumstances	Section 129(1)
The Commission	Section 273
[F20EU**]** law	Section 129(1)
Consumer	Section 129(1)
Customer	Section 129(1)
Date of reference	Section 39(9)
The decision-making authority	Section 22(7)
[F122EC Merger Regulation	Section 129(1)**]**
Enactment	Section 129(1)
Enforcement order	Section 86(6)
Enforcement undertaking	Section 89(2)
Enterprise	Section 129(1)
Enterprises ceasing to be distinct	Section 26(1)
[F123European Merger Regulations	Section 129(1) **]**
Final determination of matter to which intervention notice relates	Section 43(4) and (5)
Final determination of matter to which special intervention notice relates	Section 60(4) and (5)
Final determination of reference under section 22 or 33	Section 79(1) and (2)
Goods	Section 129(1)
Interconnected bodies corporate (and a group of interconnected bodies corporate)	Section 129(2)
Intervention notice	Section 42(2)
Market for goods or services	Section 22(6)

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Market in the United Kingdom	Section 22(6)
[[F124]Media public interest consideration	Section 44(8)**]**
Merger notice	Section 96(2)
Modify	Section 129(1)
[[F125]Newspaper	Section 44(10)**]**
[[F126]Newspaper enterprise	Section 58A(3)**]**
Notice	Section 129(1)
Notified arrangements	Section 96(6)
[[F127]OFCOM	Section 43(6)**]**
The OFT	Section 273
Orders under section 81	Section 81(6)
Orders under paragraph 2 of Schedule 7	Paragraph 2(7) of Schedule 7
The period for considering a merger notice	Sections 97 and 98
Price	Section 129(1)
Public interest consideration	Sections 42(3) and 67(9)
Public interest consideration being finalised	Section 42(8)
Publish	Section 129(4)
References under section 22, 33, 45 or 62	Sections 37(2), 49(1), 56(8) and 64(2)
Relevant customer benefit	Section 30
Relevant merger situation	Section 23 (as read with other enactments)
Reports of the Commission	Section 118(5)
Special intervention notice	Section 59(2)
Special merger situation	Section 59(3)
Subordinate legislation	Section 129(1)
Subsidiary	Section 129(1)
Supply (in relation to the supply of goods)	Section 129(1)
The supply of services (and a market for services etc.)	Section 128
The turnover in the United Kingdom of an enterprise	Section 28(2)
[[F128]The UK financial system**]**	**[**[F129]Section 129(1)**]**
Undertakings under section 80	Section 80(6)

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Undertakings under paragraph 1 of Schedule 7	Paragraph 1(7) of Schedule 7
United Kingdom national	Section 129(1)

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F121 S. 130: entry inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F122 S. 130: entry inserted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(26)(b)**

F123 S. 130: entry ceased to have effect (1.5.2004) by virtue of The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(26)(a)**

F124 S. 130: entry inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F125 S. 130: entry inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F126 S. 130: entry inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F127 S. 130: entry inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(5)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

F128 S. 130 entry inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 (S.I. 2008/2645), arts. 1(1), **3(2)**

F129 S. 130 entry inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by The Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2008 (S.I. 2008/2645), arts. 1(1), **3(2)(b)**

PART 4

MARKET INVESTIGATIONS

Modifications etc. (not altering text)

C320 Pt. 4 (ss. 131-184) modified (20.6.2003) by 1988 c. 41, Sch. 7 para. 20(5)-(8) (as substituted by Enterprise Act 2002 (c. 40), ss. 185, 279, **Sch. 11 para. 11(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C321 Pt. 4 (ss. 131-184) modified (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 23(2A)(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 22(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.

C322 Pt. 4 (ss. 131-184) modified (20.6.2003) by 1993 c. 43, s. 67(2A)(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 21(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.

C323 Pt. 4 (ss. 131-184) modified (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 46(2A)(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 20(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.

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C324 Pt. 4 (ss. 131-184) modified (20.6.2003) by 1991 c. 56, s. 31(4) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(3)**); S.I. 2003/1397, **art. 2(1)**, Sch.

C325 Pt. 4 (ss. 131-184) modified (20.6.2003) by 1991 c. 56, s. 31(2A) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.

C326 Pt. 4 (ss. 131-184) modified (20.6.2003) by 1984 c. 12, s. 50(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 16(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.

C327 Pt. 4 (ss. 131-184) modified (20.6.2003) by 1989 c. 29, s. 43(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.
Pt. 4 (ss. 131-184) modified (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), **ss. 370(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)**
Pt. 4 (ss. 131-184) modified (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **29(4)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

C328 Pt. 4 modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 73(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

CHAPTER 1

MARKET INVESTIGATION REFERENCES

Making of references

131 Power of OFT to make references

(1) The OFT may, subject to subsection (4), make a reference to the Commission if the OFT has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(2) For the purposes of this Part any reference to a feature of a market in the United Kingdom for goods or services shall be construed as a reference to—

(a) the structure of the market concerned or any aspect of that structure;

(b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or

(c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.

(3) In subsection (2) "conduct" includes any failure to act (whether or not intentional) and any other unintentional conduct.

(4) No reference shall be made under this section if—

(a) the making of the reference is prevented by section 156(1); or

(b) a reference has been made under section 132 in relation to the same matter but has not been finally determined.

(5) References in this Part to a market investigation reference being finally determined shall be construed in accordance with section 183(3) to (6).

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(6) In this Part—

"market in the United Kingdom" includes—

(a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and

(b) any market which operates only in a part of the United Kingdom;

"market investigation reference" means a reference under this section or section 132;

and references to a market for goods or services include references to a market for goods and services.

132 Ministerial power to make references

(1) Subsection (3) applies where, in relation to any goods or services, the appropriate Minister is not satisfied with a decision of the OFT not to make a reference under section 131.

(2) Subsection (3) also applies where, in relation to any goods or services, the appropriate Minister—

(a) has brought to the attention of the OFT information which the appropriate Minister considers to be relevant to the question of whether the OFT should make a reference under section 131; but

(b) is not satisfied that the OFT will decide, within such period as the appropriate Minister considers to be reasonable, whether to make such a reference.

(3) The appropriate Minister may, subject to subsection (4), make a reference to the Commission if he has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(4) No reference shall be made under this section if the making of the reference is prevented by section 156(1).

(5) In this Part "the appropriate Minister" means—

(a) the Secretary of State; or

(b) the Secretary of State and one or more than one other Minister of the Crown acting jointly.

133 Contents of references

(1) A market investigation reference shall, in particular, specify—

(a) the enactment under which it is made;

(b) the date on which it is made; and

(c) the description of goods or services to which the feature or combination of features concerned relates.

(2) A market investigation reference may be framed so as to require the Commission to confine its investigation into the effects of features of markets in the United Kingdom for goods or services of a description specified in the reference to the effects of features of such of those markets as exist in connection with—

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(a) a supply, of a description specified in the reference, of the goods or services concerned; or

(b) an acquisition, of a description specified in the reference, of the goods or services concerned.

(3) A description of the kind mentioned in subsection (2)(a) or (b) may, in particular, be by reference to—

(a) the place where the goods or services are supplied or acquired; or

(b) the persons by or to whom they are supplied or by or from whom they are acquired.

Determination of references

134 Questions to be decided on market investigation references

(1) The Commission shall, on a market investigation reference, decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(2) For the purposes of this Part, in relation to a market investigation reference, there is an adverse effect on competition if any feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(3) In subsections (1) and (2) "relevant market" means—

(a) in the case of subsection (2) so far as it applies in connection with a possible reference, a market in the United Kingdom—

(i) for goods or services of a description to be specified in the reference; and

(ii) which would not be excluded from investigation by virtue of section 133(2); and

(b) in any other case, a market in the United Kingdom—

(i) for goods or services of a description specified in the reference concerned; and

(ii) which is not excluded from investigation by virtue of section 133(2).

(4) The Commission shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions—

(a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

(b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

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(5) For the purposes of this Part, in relation to a market investigation reference, there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of—

(a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or

(b) less innovation in relation to such goods or services.

(6) In deciding the questions mentioned in subsection (4), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(7) In deciding the questions mentioned in subsection (4), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.

(8) For the purposes of this Part a benefit is a relevant customer benefit of a feature or features of a market if—

(a) it is a benefit to customers or future customers in the form of—

(i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or

(ii) greater innovation in relation to such goods or services; and

(b) the Commission, the Secretary of State or (as the case may be) the OFT believes that—

(i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and

(ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

Modifications etc. (not altering text)

C329 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

135 Variation of market investigation references

(1) The OFT or (as the case may be) the appropriate Minister may at any time vary a market investigation reference made by it or (as the case may be) him.

(2) The OFT or (as the case may be) the appropriate Minister shall consult the Commission before varying any such reference.

(3) Subsection (2) shall not apply if the Commission has requested the variation concerned.

(4) No variation under this section shall be capable of altering the period permitted by section 137 within which the report of the Commission under section 136 is to be

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prepared and published or (as the case may be) the period permitted by section 144 within which the report of the Commission under section 142 is to be prepared and published or given.

136 Investigations and reports on market investigation references

(1) The Commission shall prepare and publish a report on a market investigation reference within the period permitted by section 137.

(2) The report shall, in particular, contain—

(a) the decisions of the Commission on the questions which it is required to answer by virtue of section 134;

(b) its reasons for its decisions; and

(c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

(4) The Commission shall, at the same time as a report under this section is published—

(a) in the case of a reference under section 131, give it to the OFT; and

(b) in the case of a reference under section 132, give it to the appropriate Minister and give a copy of it to the OFT.

(5) Where a reference has been made by the OFT under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as the report under this section is published, give a copy of it to the relevant sectoral regulator concerned.

(6) Where a reference has been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as the report under this section is published, give a copy of it to the OFT.

(7) In this Part "relevant sectoral enactment" means—

(a) **[**F130in relation to the Director General of Telecommunications, section 50 of the Telecommunications Act 1984 (c. 12);**]**

(b) in relation to the Gas and Electricity Markets Authority, section 36A of the Gas Act 1986 (c. 44) or (as the case may be) section 43 of the Electricity Act 1989 (c. 29);

(c) in relation to **[**F131the Water Services Regulation Authority**]** , section 31 of the Water Industry Act 1991 (c. 56);

(d) F132. . . . . .

(e) in relation to the **[**F133Office of Rail Regulation**]**, section 67 of the Railways Act 1993 (c. 43);

(f) F134. . . . . .

(g) in relation to the Civil Aviation Authority, section 86 of the Transport Act 2000 (c. 38).

[F135(h) in relation to the Office of Communications, sections 370 and 371 of the Communications Act 2003.**]**

[F136(h) in relation to the Northern Ireland Authority for Utility Regulation, Article 46 of the Electricity (Northern Ireland) Order 1992, Article 23 of the Gas

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(Northern Ireland) Order 1996 or Article 29 of the Water and Sewerage Services (Northern Ireland) Order 2006.**]**

[F137(i) in relation to Monitor, section 73 of the Health and Social Care Act 2012.**]**

(8) In this Part "relevant sectoral regulator" means **[**F138the Director General of Telecommunications**]** , the Gas and Electricity Markets Authority, **[**F131the Water Services Regulation Authority**]**, F139. . . , the **[**F133Office of Rail Regulation**]**, F140. . . , the Civil Aviation Authority or the Office of **[**F141Communications,**]** the Northern Ireland Authority for Utility Regulation **[**F142or Monitor**]** .

(9) The Secretary of State may by order modify subsection (7) or (8).

Textual Amendments

F130 S. 136(7)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)

F131 Words in s. 136(7)(c)(8) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(2)**; S.I. 2005/2714, **art. 4(f)**

F132 S. 136(7)(d) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt II (subject to art. 3, Sch. 2)

F133 Words in s. 136 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16(5), 120(1), **Sch. 2 para. 19(u)**; S.I. 2004/827, **art. 4(g)**

F134 S. 136(7)(f) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F135 S. 136(7)(h) inserted (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(4)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)

F136 S. 136: para. (h) added "at the end" of s. 136(7) (N.I.) (1.4.2007) by virtue of The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 408, **Sch. 12 para. 46(1)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F137 S. 136(7)(i) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(6)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F138 S. 136(8): words "the Director of Telecommunications" are repealed (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by virtue of Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)

F139 Words in s. 136(8) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F140 Words in s. 136(8) repealed (N.I.) (1.4.1007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F141 Words in s. 136(8) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(6)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

F142 Words in s. 136(8) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(6)(c)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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137 Time-limits for market investigations and reports

(1) The Commission shall prepare and publish its report under section 136 within the period of two years beginning with the date of the market investigation reference concerned.

(2) Subsection (1) is subject to section 151(3) and (5).

(3) The Secretary of State may by order amend subsection (1) so as to alter the period of two years mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.

(4) No alteration shall be made by virtue of subsection (3) which results in the period for the time being mentioned in subsection (1) exceeding two years.

(5) An order under subsection (3) shall not affect any period of time within which the Commission is under a duty to prepare and publish its report under section 136 in relation to a market investigation reference if the Commission is already under that duty in relation to that reference when the order is made.

(6) Before making an order under subsection (3) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

(7) References in this Part to the date of a market investigation reference shall be construed as references to the date specified in the reference as the date on which it is made.

138 Duty to remedy adverse effects

(1) Subsection (2) applies where a report of the Commission has been prepared and published under section 136 within the period permitted by section 137 and contains the decision that there is one or more than one adverse effect on competition.

(2) The Commission shall, in relation to each adverse effect on competition, take such action under section 159 or 161 as it considers to be reasonable and practicable—

(a) to remedy, mitigate or prevent the adverse effect on competition concerned; and

(b) to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effect on competition.

(3) The decisions of the Commission under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 134(4) unless there has been a material change of circumstances since the preparation of the report or the Commission otherwise has a special reason for deciding differently.

(4) In making a decision under subsection (2), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(5) In making a decision under subsection (2), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.

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(6) The Commission shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—

(a) no detrimental effect on customers has resulted from the adverse effect on competition; and

(b) the adverse effect on competition is not being remedied, mitigated or prevented.

CHAPTER 2

PUBLIC INTEREST CASES

Intervention notices

139 Public interest intervention by Secretary of State

(1) The Secretary of State may give a notice to the Commission if—

(a) a market investigation reference has been made to the Commission;

(b) no more than four months has passed since the date of the reference;

(c) the reference is not finally determined; and

(d) the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the case.

(2) The Secretary of State may give a notice to the OFT if—

(a) the OFT is considering whether to accept—

(i) an undertaking under section 154 instead of making a reference under section 131; or

(ii) an undertaking varying or superseding any such undertaking;

(b) the OFT has published a notice under section 155(1) or (4); and

(c) the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the case.

(3) In this Part "intervention notice" means a notice under subsection (1) or (2).

(4) No more than one intervention notice shall be given under subsection (1) in relation to the same market investigation reference and no more than one intervention notice shall be given under subsection (2) in relation to the same proposed undertaking or in relation to proposed undertakings which do not differ from each other in any material respect.

(5) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 153 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.

(6) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.

(7) For the purposes of this Part a public interest consideration is finalised if—

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(a) it is specified in section 153 otherwise than by virtue of an order under subsection (3) of that section; or

(b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (6) of section 181 and within the period mentioned in that subsection.

Intervention notices under section 139(1)

140 Intervention notices under section 139(1)

(1) An intervention notice under section 139(1) shall state—

(a) the market investigation reference concerned;

(b) the date of the market investigation reference concerned;

(c) the public interest consideration or considerations which are, or may be, relevant to the case; and

(d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the case, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(1) and which is in force.

(4) An intervention notice under section 139(1) shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

(5) For the purposes of subsection (4) a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter if—

(a) the period permitted by section 144 for the preparation of the report of the Commission under section 142 and for action to be taken in relation to it under section 143(1) or (3) has expired and no such report has been so prepared or no such action has been taken;

(b) the Commission decides under section 145(1) to terminate its investigation;

(c) the report of the Commission has been prepared under section 142 and published under section 143(1) within the period permitted by section 144;

(d) the Secretary of State fails to make and publish a decision under subsection (2) of section 146 within the period required by subsection (3) of that section;

(e) the Secretary of State decides under section 146(2) that no eligible public interest consideration is relevant;

(f) the Secretary of State decides under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161;

(g) the Secretary of State accepts an undertaking under section 159 or makes an order under section 161; or

(h) the Secretary of State decides to revoke the intervention notice concerned.

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(6) For the purposes of subsections (4) and (5) the time when a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter is—

(a) in a case falling within subsection (5)(a) or (d), the expiry of the period concerned;

(b) in a case falling within subsection (5)(b), (e), (f) or (h), the making of the decision concerned;

(c) in a case falling within subsection (5)(c), the publication of the report concerned; and

(d) in a case falling within subsection (5)(g), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

(7) In subsection (6)(d) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action under section 147(2) involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (5)(g) and (6)(d).

141 Questions to be decided by Commission

(1) This section applies where an intervention notice under section 139(1) is in force in relation to a market investigation reference.

(2) The Commission shall decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(3) The Commission shall, if it has decided that there is an adverse effect on competition, decide the following additional questions—

(a) whether action should be taken by the Secretary of State under section 147 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

(b) whether the Commission should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(4) The Commission shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148(1))—

(a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition

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concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

(b) whether the Commission should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(5) In deciding the questions mentioned in subsections (3) and (4), the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(6) In deciding the questions mentioned in subsections (3) and (4), the Commission may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.

Modifications etc. (not altering text)

C330 Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

142 Investigations and reports by Commission

(1) Where an intervention notice under section 139(1) is in force in relation to a market investigation reference, the Commission shall prepare a report on the reference and take action in relation to it under section 143(1) or (3) within the period permitted by section 144.

(2) The report shall, in particular, contain—

(a) the decisions of the Commission on the questions which it is required to answer by virtue of section 141;

(b) its reasons for its decisions; and

(c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.

(3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

143 Publication etc. of reports of Commission

(1) The Commission shall publish a report under section 142 if it contains—

(a) the decision of the Commission that there is no adverse effect on competition; or

(b) the decisions of the Commission that there is one or more than one adverse effect on competition but, on the question mentioned in section 141(4)(a) and in relation to each adverse effect on competition, that no action should be taken by it.

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(2) The Commission shall, at the same time as the report is published under subsection (1) —

(a) in the case of a reference under section 131, give it to the OFT; and

(b) in the case of a reference under section 132, give it to the appropriate Minister and give a copy of it to the OFT.

(3) Where a report under section 142 contains the decisions of the Commission that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it, the Commission shall give the report to the Secretary of State.

(4) The Secretary of State shall publish, no later than publication of his decision under section 146(2) in relation to the case, a report of the Commission given to him under subsection (3) and not required to be published by virtue of section 148(2).

(5) The Secretary of State shall, at the same time as a report of the Commission given to him under subsection (3) is published under subsection (4), give a copy of it—

(a) in the case of a reference under section 131, to the OFT; and

(b) in the case of a reference under section 132, to any other Minister of the Crown who made the reference and to the OFT.

(6) Where a reference has been made by the OFT under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the relevant authority shall, at the same time as the report under section 142 is published under subsection (1) or (4), give a copy of it to the relevant sectoral regulator concerned.

(7) Where a reference has been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the relevant authority shall, at the same time as the report under section 142 is published under subsection (1) or (4), give a copy of it to the OFT.

(8) In subsections (6) and (7) "the relevant authority" means—

(a) in the case of a report published under subsection (1), the Commission; and

(b) in the case of a report published under subsection (4), the Secretary of State.

144 Time-limits for investigations and reports: Part 4

(1) The Commission shall, within the period of two years beginning with the date of the reference, prepare its report under section 142 and publish it under subsection (1) of section 143 or (as the case may be) give it to the Secretary of State under subsection (3) of that section.

(2) The Secretary of State may by order amend subsection (1) so as to alter the period of two years mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.

(3) No alteration shall be made by virtue of subsection (2) which results in the period for the time being mentioned in subsection (1) exceeding two years.

(4) An order under subsection (2) shall not affect any period of time within which, in relation to a market investigation reference, the Commission is under a duty to prepare its report under section 142 and take action in relation to it under section 143(1) or

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(3) if the Commission is already under that duty in relation to that reference when the order is made.

(5) Before making an order under subsection (2) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

145 Restrictions where public interest considerations not finalised: Part 4

(1) The Commission shall terminate its investigation under section 142 if—

(a) the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;

(b) no other public interest consideration is mentioned in the notice;

(c) at least 24 weeks has elapsed since the giving of the notice; and

(d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.

(2) Where the intervention notice concerned mentions a public interest consideration which is not finalised on the giving of the notice, the Commission shall not give its report under section 142 to the Secretary of State in accordance with section 143(3) unless the period of 24 weeks beginning with the giving of the intervention notice concerned has expired or the public interest consideration concerned has been finalised.

(3) The Commission shall, in reporting on any of the questions mentioned in section 141(3), disregard any public interest consideration which has not been finalised before the giving of the report.

(4) The Commission shall, in reporting on any of the questions mentioned in section 141(3), disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.

(5) Subsections (1) to (4) are without prejudice to the power of the Commission to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

146 Decision of Secretary of State

(1) Subsection (2) applies where the Secretary of State has received a report of the Commission which—

(a) has been prepared under section 142;

(b) contains the decisions that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it; and

(c) has been given to the Secretary of State as required by section 143(3).

(2) The Secretary of State shall decide whether—

(a) any eligible public interest consideration is relevant; or

(b) any eligible public interest considerations are relevant;

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to any action which is mentioned in the report by virtue of section 141(4)(a) and (c) and which the Commission should take for the purpose of remedying, mitigating or preventing any adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted or may be expected to result from any adverse effect on competition.

(3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the Commission under section 142.

(4) In this section "eligible public interest consideration" means a public interest consideration which—

(a) was mentioned in the intervention notice concerned; and

(b) was not disregarded by the Commission for the purposes of its report under section 142.

147 Remedial action by Secretary of State

(1) Subsection (2) applies where the Secretary of State—

(a) has decided under subsection (2) of section 146 within the period required by subsection (3) of that section that an eligible public interest consideration is relevant as mentioned in subsection (2) of that section or eligible public interest considerations are so relevant; and

(b) has published his decision within the period required by subsection (3) of that section.

(2) The Secretary of State may, in relation to any adverse effect on competition identified in the report concerned, take such action under section 159 or 161 as he considers to be—

(a) reasonable and practicable—

(i) to remedy, mitigate or prevent the adverse effect on competition concerned; or

(ii) to remedy, mitigate or prevent any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(b) appropriate in the light of the eligible public interest consideration concerned or (as the case may be) the eligible public interest considerations concerned.

(3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to—

(a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition; and

(b) the report of the Commission under section 142.

(4) In having regard by virtue of subsection (3) to the report of the Commission under section 142, the Secretary of State shall not challenge the decision of the Commission contained in the report that there is one or more than one adverse effect on competition.

(5) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.

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(6) The Secretary of State shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—

(a) no detrimental effect on customers has resulted from the adverse effect on competition; and

(b) the adverse effect on competition is not being remedied, mitigated or prevented.

(7) In this section "eligible public interest consideration" has the same meaning as in section 146.

148 Reversion of the matter to the Commission

(1) If—

(a) the Secretary of State fails to make and publish his decision under subsection (2) of section 146 within the period required by subsection (3) of that section; or

(b) the Secretary of State decides that no eligible public interest consideration is relevant as mentioned in subsection (2) of that section;

the Commission shall proceed under section 138 as if the report had been prepared and published under section 136 within the period permitted by section 137.

(2) The Commission shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (1).

(3) The Commission shall, at the same time as its report is published under subsection (2), give a copy of it—

(a) in the case of a reference under section 131, to the OFT; and

(b) in the case of a reference under section 132, to any Minister of the Crown who made the reference (other than the Secretary of State) and to the OFT.

(4) Where a reference has been made by the OFT under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as its report is published under subsection (2), give a copy of it to the relevant sectoral regulator concerned.

(5) Where a reference has been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the Commission shall, at the same time as its report is published under subsection (2), give a copy of it to the OFT.

(6) In relation to proceedings by virtue of subsection (1), the reference in section 138(3) to decisions of the Commission included in its report by virtue of section 134(4) shall be construed as a reference to decisions which were included in the report of the Commission by virtue of section 141(4).

(7) Where the Commission, in proceeding by virtue of subsection (1), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141(4), it shall not so proceed without the consent of the Secretary of State.

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(8) The Secretary of State shall not withhold his consent under subsection (7) unless he believes that the proposed alternative way of proceeding will operate against the public interest.

(9) For the purposes of subsection (8) a proposed alternative way of proceeding will operate against the public interest only if any eligible public interest consideration or considerations outweigh the considerations which have led the Commission to propose proceeding in that way.

(10) In deciding whether to withhold his consent under subsection (7), the Secretary of State shall accept the Commission's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.

(11) In this section "eligible public interest consideration" has the same meaning as in section 146.

Intervention notices under section 139(2)

149 Intervention notices under section 139(2)

(1) An intervention notice under section 139(2) shall state—

(a) the proposed undertaking which may be accepted by the OFT;

(b) the notice under section 155(1) or (4);

(c) the public interest consideration or considerations which are, or may be, relevant to the case; and

(d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.

(2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the case, he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

(3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(2) and which is in force.

(4) An intervention notice under section 139(2) shall come into force when it is given and shall cease to be in force on the occurrence of any of the events mentioned in subsection (5).

(5) The events are—

(a) the acceptance by the OFT with the consent of the Secretary of State of an undertaking which is the same as the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) or which does not differ from it in any material respect;

(b) the decision of the OFT to proceed neither with the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) nor a proposed undertaking which does not differ from it in any material respect; or

(c) the decision of the Secretary of State to revoke the intervention notice concerned.

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150 Power of veto of Secretary of State

(1) Where an intervention notice under section 139(2) is in force, the OFT shall not, without the consent of the Secretary of State, accept the proposed undertaking concerned or a proposed undertaking which does not differ from it in any material respect.

(2) The Secretary of State shall withhold his consent if he believes that it is or may be the case that the proposed undertaking will, if accepted, operate against the public interest.

(3) For the purposes of subsection (2) a proposed undertaking will, if accepted, operate against the public interest only if any public interest consideration which is mentioned in the intervention notice concerned and has been finalised, or any public interest considerations which are so mentioned and have been finalised, outweigh the considerations which have led the OFT to propose accepting the undertaking.

(4) In making his decision under subsection (2) the Secretary of State shall accept the OFT's view of what undertakings, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be most appropriate.

(5) Where a public interest consideration which is mentioned in the intervention notice concerned is not finalised on the giving of the notice, the Secretary of State shall not make his decision as to whether to give his consent under this section before—

(a) the end of the period of 24 weeks beginning with the giving of the intervention notice; or

(b) if earlier, the date on which the public interest consideration concerned has been finalised.

(6) Subject to subsections (2) to (5), the Secretary of State shall not withhold his consent under this section.

Other

151 Further interaction of intervention notices with general procedure

(1) Where an intervention notice under section 139(1) comes into force in relation to a market investigation reference, sections 134(1), (4), (6) and (7), 136(1) to (6), 137(1) to (6) and 138 shall cease to apply in relation to that reference.

(2) Where the Secretary of State revokes an intervention notice which has been given under section 139(1), the Commission shall instead proceed under sections 134 and 136 to 138.

(3) Where the Commission is proceeding by virtue of subsection (2), the period within which the Commission shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.

(4) Where the Commission terminates its investigation under section 145(1), the Commission shall proceed under sections 134 and 136 to 138.

(5) Where the Commission is proceeding by virtue of subsection (4), the period within which the Commission shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.

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(6) In determining the period of 20 days mentioned in subsection (3) or (5) 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.

152 Certain duties of OFT and Commission

(1) The OFT shall, in considering whether to make a reference under section 131, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 153 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.

(2) The Commission shall, in investigating any reference made to it under section 131 or 132 within the previous four months, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 153 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.

(3) The OFT and the Commission shall bring to the attention of the Secretary of State any representations about exercising his power under section 153(3) which have been made to the OFT or (as the case may be) the Commission.

153 Specified considerations: Part 4

(1) The interests of national security are specified in this section.

(2) In subsection (1) "national security" includes public security; and in this subsection "public security" has the same meaning as in article **[**F143 21(4) of Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings.**]** .

(3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.

(4) An order under this section may apply in relation to cases under consideration by the OFT, by the Secretary of State, by the appropriate Minister (other than the Secretary of State acting alone) or by the Commission before the making of the order as well as cases under consideration on or after the making of the order.

Textual Amendments

F143 Words in s. 153(2) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(27)**

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CHAPTER 3

ENFORCEMENT

Undertakings and orders

154 Undertakings in lieu of market investigation references

(1) Subsection (2) applies if the OFT considers that it has the power to make a reference under section 131 and otherwise intends to make such a reference.

(2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing—

(a) any adverse effect on competition concerned; or

(b) any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

accept, from such persons as it considers appropriate, undertakings to take such action as it considers appropriate.

(3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(4) In proceeding under subsection (2), the OFT may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned.

(5) The OFT shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—

(a) no detrimental effect on customers has resulted from the adverse effect on competition; and

(b) the adverse effect on competition is not being remedied, mitigated or prevented.

(6) An undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

(c) may be released by the OFT.

(7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(8) This section is subject to sections 150 and 155.

155 Undertakings in lieu: procedural requirements

(1) Before accepting an undertaking under section 154 (other than an undertaking under that section which varies an undertaking under that section but not in any material respect), the OFT shall—

(a) publish notice of the proposed undertaking; and

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(b) consider any representations made in accordance with the notice and not withdrawn.

(2) A notice under subsection (1) shall state—

(a) that the OFT proposes to accept the undertaking;

(b) the purpose and effect of the undertaking;

(c) the situation that the undertaking is seeking to deal with;

(d) any other facts which the OFT considers justify the acceptance of the undertaking;

(e) a means of gaining access to an accurate version of the proposed undertaking at all reasonable times; and

(f) the period (not less than 15 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed undertaking.

(3) The matters to be included in a notice under subsection (1) by virtue of subsection (2) shall, in particular, include—

(a) the terms of the reference under section 131 which the OFT considers that it has power to make and which it otherwise intends to make; and

(b) the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the OFT has identified.

(4) The OFT shall not accept the undertaking with modifications unless it—

(a) publishes notice of the proposed modifications; and

(b) considers any representations made in accordance with the notice and not withdrawn.

(5) A notice under subsection (4) shall state—

(a) the proposed modifications;

(b) the reasons for them; and

(c) the period (not less than 7 days starting with the date of the publication of the notice under subsection (4)) within which representations may be made in relation to the proposed modifications.

(6) If, after publishing notice under subsection (1) or (4), the OFT decides—

(a) not to accept the undertaking concerned; and

(b) not to proceed by virtue of subsection (8) or (9);

it shall publish notice of that decision.

(7) As soon as practicable after accepting an undertaking to which this section applies, the OFT shall—

(a) serve a copy of the undertaking on any person by whom it is given; and

(b) publish the undertaking.

(8) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the OFT—

(a) has already published notice under subsection (1) but not subsection (4) in relation to the proposed undertaking; and

(b) considers that the modifications which are now being proposed are not material in any respect.

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(9) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the OFT—

(a) has already published notice under subsections (1) and (4) in relation to the matter concerned; and

(b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under subsection (4).

(10) Paragraphs 6 to 8 (but not paragraph 9) of Schedule 10 (procedural requirements before terminating undertakings) shall apply in relation to the proposed release of undertakings under section 154 (other than in connection with accepting an undertaking under that section which varies or supersedes an undertaking under that section) as they apply in relation to the proposed release of undertakings under section 73.

156 Effect of undertakings under section 154

(1) No market investigation reference shall be made by the OFT or the appropriate Minister in relation to any feature, or combination of features, of a market in the United Kingdom for goods or services if—

(a) the OFT has accepted an undertaking or group of undertakings under section 154 within the previous 12 months; and

(b) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which the feature, or combination of features, relates.

(2) Subsection (1) does not prevent the making of a market investigation reference if—

(a) the OFT considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or

(b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the OFT which was false or misleading in a material respect.

157 Interim undertakings: Part 4

(1) Subsection (2) applies where—

(a) a market investigation reference has been made;

(b) a report has been published under section 136 within the period permitted by section 137 or (as the case may be) a report prepared under section 142 and given to the Secretary of State under section 143(3) within the period permitted by section 144 has been published; and

(c) the market investigation reference concerned is not finally determined.

(2) The relevant authority may, for the purpose of preventing pre-emptive action, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.

(3) An undertaking under this section—

(a) shall come into force when accepted;

(b) may be varied or superseded by another undertaking; and

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(c) may be released by the relevant authority.

(4) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.

(5) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or releasing an undertaking under this section.

(6) In this section and section 158—

"pre-emptive action" means action which might impede the taking of any action under section 138(2) or (as the case may be) 147(2) in relation to the market investigation reference concerned; and

"the relevant authority" means—

(a) where an intervention notice is in force in relation to the market investigation reference, the Secretary of State;

(b) in any other case, the Commission.

158 Interim orders: Part 4

(1) Subsection (2) applies where—

(a) a market investigation reference has been made;

(b) a report has been published under section 136 within the period permitted by section 137 or (as the case may be) a report prepared under section 142 and given to the Secretary of State under section 143(3) within the period permitted by section 144 has been published; and

(c) the market investigation reference concerned is not finally determined.

(2) The relevant authority may by order, for the purpose of preventing pre-emptive action—

(a) prohibit or restrict the doing of things which the relevant authority considers would constitute pre-emptive action;

(b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;

(c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

(d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

(3) An order under this section—

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(4) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.

(5) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or revoking an order under this section.

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

159 Final undertakings: Part 4

(1) The Commission may, in accordance with section 138, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.

(2) The Secretary of State may, in accordance with section 147, accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.

(3) An undertaking under this section shall come into force when accepted.

(4) An undertaking under subsection (1) or (2) may be varied or superseded by another undertaking under that subsection.

(5) An undertaking under subsection (1) may be released by the Commission and an undertaking under subsection (2) may be released by the Secretary of State.

(6) The Commission or (as the case may be) the Secretary of State shall, as soon as reasonably practicable, consider any representations received by it or (as the case may be) him in relation to varying or releasing an undertaking under this section.

160 Order-making power where final undertakings not fulfilled: Part 4

(1) Subsection (2) applies where the relevant authority considers that—

(a) an undertaking accepted by the relevant authority under section 159 has not been, is not being or will not be fulfilled; or

(b) in relation to an undertaking accepted by the relevant authority under that section, information which was false or misleading in a material respect was given to the relevant authority or the OFT by the person giving the undertaking before the relevant authority decided to accept the undertaking.

(2) The relevant authority may, for any of the purposes mentioned in section 138(2) or (as the case may be) 147(2), make an order under this section.

(3) Subsections (3) to (6) of section 138 or (as the case may be) 147 shall apply for the purposes of subsection (2) above as they apply for the purposes of that section.

(4) An order under this section may contain—

(a) anything permitted by Schedule 8; and

(b) such supplementary, consequential or incidental provision as the relevant authority considers appropriate.

(5) An order under this section—

(a) shall come into force at such time as is determined by or under the order;

(b) may contain provision which is different from the provision contained in the undertaking concerned; and

(c) may be varied or revoked by another order.

(6) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

(7) In this section "the relevant authority" means—

(a) in the case of an undertaking accepted under section 159 by the Commission, the Commission; and

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(b) in the case of an undertaking accepted under that section by the Secretary of State, the Secretary of State.

Modifications etc. (not altering text)

C331 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C332 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C333 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C334 Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1993 c. 21, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 29(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C335 Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1994 c. 17, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 31(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

161 Final orders: Part 4

(1) The Commission may, in accordance with section 138, make an order under this section.

(2) The Secretary of State may, in accordance with section 147, make an order under this section.

(3) An order under this section may contain—

(a) anything permitted by Schedule 8; and

(b) such supplementary, consequential or incidental provision as the person making it considers appropriate.

(4) An order under this section—

(a) shall come into force at such time as is determined by or under the order; and

(b) may be varied or revoked by another order.

(5) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

Modifications etc. (not altering text)

C336 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C337 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C338 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

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C339 Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1993 c. 21, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 29(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C340 Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1994 c. 17, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 31(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

Enforcement functions of OFT

162 Duty of OFT to monitor undertakings and orders: Part 4

(1) The OFT shall keep under review the carrying out of any enforcement undertaking or any enforcement order.

(2) The OFT shall, in particular, from time to time consider—

(a) whether an enforcement undertaking or enforcement order has been or is being complied with;

(b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and—

(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 enforcement undertaking; and

(c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.

(3) The OFT shall give the Commission or (as the case may be) the Secretary of State such advice as it considers appropriate in relation to—

(a) any possible variation or release by the Commission or (as the case may be) the Secretary of State of an enforcement undertaking accepted by it or (as the case may be) him;

(b) any possible new enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State so as to supersede another enforcement undertaking given to the Commission or (as the case may be) the Secretary of State;

(c) any possible variation or revocation by the Commission or (as the case may be) the Secretary of State of an enforcement order made by the Commission or (as the case may be) the Secretary of State;

(d) any possible enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State instead of an enforcement order or any possible enforcement order to be made by the Commission or (as the case may be) the Secretary of State instead of an enforcement undertaking; or

(e) the enforcement by virtue of section 167(6) to (8) of any enforcement undertaking or enforcement order.

(4) The OFT shall take such action as it considers appropriate in relation to—

(a) any possible variation or release by it of an undertaking accepted by it under section 154;

(b) any possible new undertaking to be accepted by it under section 154 so as to supersede another undertaking given to it under that section; or

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(c) the enforcement by it by virtue of section 167(6) of any enforcement undertaking or enforcement order.

(5) The OFT shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.

(6) The OFT shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).

(7) The OFT shall—

(a) give any report prepared by it under subsection (6) to the Commission;

(b) give a copy of the report to the Secretary of State; and

(c) publish the report.

(8) In this Part—

"enforcement order" means an order made under section 158, 160 or 161; and

"enforcement undertaking" means an undertaking accepted under section 154, 157 or 159.

Modifications etc. (not altering text)

C341 Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C342 Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 23(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 12(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C343 Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 42(5A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para 12(3)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

163 Further role of OFT in relation to undertakings and orders: Part 4

(1) Subsections (2) and (3) apply where the Commission or the Secretary of State (in this section "the relevant authority") is considering whether to accept undertakings under section 157 or 159.

(2) The relevant authority may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under section 157 or (as the case may be) 159.

(3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT's consultations within such period as the relevant authority may require.

(4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under section 157 or (as the case may be) 159.

(5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.

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(6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertakings) in a particular case, the OFT shall give such advice as it considers appropriate.

Supplementary

164 Enforcement undertakings and orders under this Part: general provisions

(1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.

(2) The following enactments in Part 3 shall apply in relation to enforcement orders under this Part as they apply in relation to enforcement orders under that Part—

(a) section 86(1) to (5) (enforcement orders: general provisions); and

(b) section 87 (power of directions conferred by enforcement order).

(3) An enforcement order under section 160 or 161 or any explanatory material accompanying the order shall state—

(a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;

(b) the date on which the order comes into force;

(c) the possible consequences of not complying with the order; and

(d) the section of this Part under which a review can be sought in relation to the order.

Modifications etc. (not altering text)

C344 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C345 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C346 Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C347 Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1993 c. 21, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 29(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C348 Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1994 c. 17, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 31(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

165 Procedural requirements for certain undertakings and orders: Part 4

Schedule 10 (procedural requirements for certain undertakings and orders), other than paragraph 9 of that Schedule, shall apply in relation to undertakings under section 159 and orders under section 160 or 161 as it applies in relation to undertakings under section 82 and orders under section 83 or 84.

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166 Register of undertakings and orders: Part 4

(1) The OFT shall compile and maintain a register for the purposes of this Part.

(2) The register shall be kept in such form as the OFT considers appropriate.

(3) The OFT shall ensure that the following matters are entered in the register—

(a) the provisions of any enforcement undertaking accepted by virtue of this Part (whether by the OFT, the Commission, the Secretary of State or a relevant sectoral regulator);

(b) the provisions of any enforcement order made by virtue of this Part (whether by the Commission, the Secretary of State or a relevant sectoral regulator); and

(c) the details of any variation, release or revocation of such an undertaking or order.

(4) The duty in subsection (3) does not extend to anything of which the OFT is unaware.

(5) The Commission, the Secretary of State and any relevant sectoral regulator shall inform the OFT of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them or enforcement orders made by them.

(6) The OFT shall ensure that the contents of the register are available to the public—

(a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and

(b) subject to such reasonable fees (if any) as the OFT may determine.

(7) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

Modifications etc. (not altering text)

C349 Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C350 Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 23(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 12(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

C351 Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 42(5A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para 12(3)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

167 Rights to enforce undertakings and orders under this Part

(1) This section applies to any enforcement undertaking or enforcement order.

(2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.

(3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.

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(4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.

(6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the OFT for an injunction or for interdict or for any other appropriate relief or remedy.

(7) Compliance with an undertaking accepted under section 157 or 159, or an order under section 158, 160 or 161, shall also be enforceable by civil proceedings brought by the relevant authority for an injunction or for interdict or for any other appropriate relief or remedy.

(8) In subsection (7) "the relevant authority" means—

(a) in the case of an undertaking accepted by the Commission or an order made by the Commission, the Commission; and

(b) in the case of an undertaking accepted by the Secretary of State or an order made by the Secretary of State, the Secretary of State.

(9) Subsections (6) to (8) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

CHAPTER 4

SUPPLEMENTARY

Regulated markets

168 Regulated markets

(1) Subsection (2) applies where the Commission or the Secretary of State is considering for the purposes of this Part whether relevant action would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.

(2) The Commission or (as the case may be) the Secretary of State shall, in deciding whether such action would be reasonable and practicable, have regard to the relevant statutory functions of the sectoral regulator concerned.

(3) In this section "relevant action" means—

(a) **[**[F144]modifying the conditions of a licence granted under section 7 of the Telecommunications Act 1984 (c. 12);**]**

(b) modifying conditions in force under Part 4 of the Airports Act 1986 (c. 31) other than any conditions imposed or modified in pursuance of section 40(3) or (4) of that Act;

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(c) modifying the conditions of a licence granted under section 7 **[**F145or 7A**][**F145, 7A or 7AB**]** of the Gas Act 1986 (c. 44);

(d) modifying the conditions of a licence granted under section 6 of the Electricity Act 1989 (c. 29);

(e) modifying networking arrangements (within the meaning given by **[**F146section 290 of the Communications Act 2003**]**);

(f) modifying the conditions of a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56);

[F147(ff) modifying the conditions of a licence granted under Chapter 1A of Part 2 of the Act of 1991 or modifying the terms and conditions of an agreement under section 66D of that Act;**]**

(g) modifying the conditions of a licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));

(h) modifying the conditions of a licence granted under section 8 of the Railways Act 1993 (c. 43);

[F148(hh) modifying the conditions of a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005;**]**

(i) modifying an access agreement (within the meaning given by section 83(1) of the Act of 1993) or a franchise agreement (within the meaning given by section 23(3) of that Act);

(j) modifying conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order;

(k) modifying the conditions of a licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));

F149(l) . . . . . .

(m) modifying the conditions of a licence granted under section 5 of the Transport Act 2000 (c. 38).

[F150(n) modifying the conditions of a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006.**]**

[F151(o) modifying regulatory conditions imposed under Part 3 of the Postal Services Act 2011;**]**

[F152(p) modifying the conditions of a licence issued under section 87 of the Health and Social Care Act 2012.**]**

(4) In this section "relevant statutory functions" means—

(a) **[**F153in relation to any licence granted under section 7 of the Telecommunications Act 1984, the duties and obligations of the Director General of Telecommunications imposed on him by or in pursuance of any enactment or other provision mentioned in section 7(5)(a) of that Act;**]**

(b) in relation to conditions in force under Part 4 of the Airports Act 1986 (c. 31) other than any conditions imposed or modified in pursuance of section 40(3) or (4) of that Act, the duties of the Civil Aviation Authority under section 39(2) and (3) of that Act;

(c) in relation to any licence granted under section 7 **[**F154or 7A**][**F154, 7A or 7AB**]** of the Gas Act 1986 (c. 44), the objectives and duties of the Gas and Electricity Markets Authority under section 4AA and 4AB(2) of that Act;

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(d) in relation to any licence granted under section 6 of the Electricity Act 1989 (c. 29), the objectives and duties of the Gas and Electricity Markets Authority under section 3A and 3B(2) of that Act;

[F155(e) in relation to any networking arrangements (within the meaning given by section 290 of the Communications Act 2003), the duty of the Office of Communications under subsection (1) of section 3 of that Act to secure the matters mentioned in subsection (2)(c) of that section;**]**

(f) in relation to a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), the duties of **[**F156the Water Services Regulation Authority**]** under section 2 of that Act;

[F157(ff) in relation to a licence granted under Chapter 1A of Part 2 of the Act of 1991 or an agreement under section 66D of that Act, the duties of the Authority under section 2 of that Act or under that section and section 66D of that Act (as the case may be);**]**

(g) in relation to any licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), the duty of the Director General of Electricity Supply for Northern Ireland under article 6 of that Order;

(h) in relation to any licence granted under section 8 of the Railways Act 1993 (c. 43) **[**F158where none of the conditions of the licence relate to consumer protection**]** , the duties of the **[**F159Office of Rail Regulation**]** under section 4 of that Act;

[F160(hh) in relation to a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 where none of the conditions of the SNRP relate to consumer protection, the duties of the Department for Regional Development under regulation 36 of those Regulations;**]**

(i) **[**F161in relation to any licence granted under section 8 of the Act of 1993 where one or more than one condition of the licence relates to consumer protection, the duties of the **[**F159Office of Rail Regulation**]** under section 4 of that Act and the duties of the Strategic Rail Authority under section 207 of the Transport Act 2000 (c. 38);**]**

(j) in relation to any access agreement (within the meaning given by section 83(1) of the Act of 1993), the duties of the **[**F159Office of Rail Regulation**]** under section 4 of the Act of 1993;

(k) in relation to any franchise agreement (within the meaning given by section 23(3) of the Act of 1993), the duties of the **[**F162Secretary of State, the Scottish Ministers and the National Assembly for Wales under section 4 of the Act of 1993**]** ;

(l) in relation to conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order, the duties of the Civil Aviation Authority under article 30(2) and (3) of that Order;

(m) in relation to any licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), the duties of the Director General of Gas for Northern Ireland under article 5 of that Order;

F163(n) . . . . . .

(o) in relation to any licence granted under section 5 of the Transport Act 2000, the duties of the Civil Aviation Authority under section 87 of that Act.

[F164(p) in relation to a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006, the duties of

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the Northern Ireland Authority for Utility Regulation under Article 6 of that Order**]**

[F165(q) in relation to regulatory conditions imposed under Part 3 of the Postal Services Act 2011, the duty of the Office of Communications under section 29 of that Act;**]**

[F166(r) in relation to any licence issued under section 87 of the Health and Social Care Act 2012, the duties of Monitor under sections 62 and 66 of that Act.**]**

(5) In this section "sectoral regulator" means—

(a) the Civil Aviation Authority;

[F167(b) the Northern Ireland Authority for Utility Regulation.**]**

(d) **[**F168the Director General of Telecommunications;**]**

(e) the Water Services Regulation Authority;

(f) the Gas and Electricity Markets Authority;

[F169(g) the Office of Communications;**]**

F170(h) . . . . . .

(i) the **[**F159Office of Rail Regulation**]**; F171. . .

[F172(ia) Monitor;**]**

[F173(j) the Secretary of State;

(k) the Scottish Ministers; or

(l) the National Assembly for Wales.**][**F174 or

(k) the Department for Regional Development.**]**

(6) Subsection (7) applies where the Commission or the Secretary of State is considering for the purposes of this Part whether modifying the conditions of a licence granted under section 7 **[**F175or 7A**][**F175, 7A or 7AB**]** of the Gas Act 1986 (c. 44) or section 6 of the Electricity Act 1989 (c. 29) would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.

(7) The Commission or (as the case may be) the Secretary of State may, in deciding whether modifying the conditions of such a licence would be reasonable and practicable, have regard to those matters to which the Gas and Electricity Markets Authority may have regard by virtue of section 4AA(4) of the Act of 1986 or (as the case may be) section 3A(4) of the Act of 1989.

(8) The Secretary of State may by order modify subsection (3), (4), (5), (6) or (7).

(9) Part 2 of Schedule 9 (which makes provision for functions under this Part to be exercisable by various sectoral regulators) shall have effect.

Textual Amendments

F144 S. 168(3)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

F145 Words in s. 168(3)(c) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**

F146 Words in s. 168(3)(e) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

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F147 S. 168(3)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(a)**; S.I. 2005/2714, **art. 3(c)**

F148 S. 168(3)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(a)**

F149 S. 168(3)(l) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(2)(a)**; S.I. 2011/2329, art. 3

F150 S. 168(3)(n) added (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(3)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F151 S. 168(3)(o) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(2)(b)**; S.I. 2011/2329, art. 3

F152 S. 168(3)(p) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F153 S. 168(4)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

F154 Words in s. 168(4)(c) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**

F155 S. 168(4)(e) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

F156 Words in s. 168(4)(f) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(3)(a)**; S.I. 2005/2714, **art. 4(f)**

F157 S. 168(4)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(b)**; S.I. 2005/2714, **art. 3(c)**

F158 Words in s. 168(4)(h) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F159 Words in s. 168 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16(5), 120(1), **Sch. 2 para. 19(u)**; S.I. 2004/827, **art. 4(g)**

F160 S. 168(4)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(b)**

F161 S. 168(4)(i) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.

F162 Words in s. 168(4)(k) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(2)(c)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F163 S. 168(4)(n) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(a)**; S.I. 2011/2329, art. 3

F164 S. 168(4)(p) added (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(4)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F165 S. 168(4)(q) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(b)**; S.I. 2011/2329, art. 3

F166 S. 168(4)(r) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(b)**, 306(4); S.I. 2013/671, art. 2(3)

F167 S. 168(5)(b) substituted (N.I.) (1.4.2007) for s. 168(5)(b)(c) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(5)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F168 S. 168(5)(d) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in

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Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

F169 S. 168(5)(g) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

F170 S. 168(5)(h) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(4)**; S.I. 2011/2329, art. 3

F171 Word in s. 168(5)(i) repealed (16.10.2005 for E.W.S) and omitted (3.1.2006 for N.I.) by virtue of Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1**; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.R. 2005/537, reg. 45, **Sch. 5 Pt. 1 para. 4(c)**

F172 S. 168(5)(ia) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(c)**, 306(4); S.I. 2013/671, art. 2(3)

F173 S. 168(5)(j)-(l) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) for s. 168(5)(j) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(3)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1

F174 S. 168(5)(k) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(c)(ii)**

F175 Words in s. 168(6) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**

Modifications etc. (not altering text)

C352 S. 168 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(f)**

C353 S. 168(3)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(a)**

C354 S. 168(4)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(a)**
S. 168(4)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(b)**

Consultation, information and publicity

169 Certain duties of relevant authorities to consult: Part 4

(1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to have a substantial impact on the interests of any person.

(2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.

(3) In consulting the person concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.

(4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—

(a) any restrictions imposed by any timetable for making the decision; and

(b) any need to keep what is proposed, or the reasons for it, confidential.

(5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.

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(6) In this section—

"the relevant authority" means the OFT, the appropriate Minister or the Commission; and

"relevant decision" means—

(a) in the case of the OFT, any decision by the OFT—

(i) as to whether to make a reference under section 131 or accept undertakings under section 154 instead of making such a reference; or

(ii) to vary under section 135 such a reference;

(b) in the case of the appropriate Minister, any decision by the appropriate Minister—

(i) as to whether to make a reference under section 132; or

(ii) to vary under section 135 such a reference; and

(c) in the case of the Commission, any decision on the questions mentioned in section 134 or 141.

170 General information duties

(1) The OFT shall give the Commission—

(a) such information in its possession as the Commission may reasonably require to enable the Commission to carry out its functions under this Part; and

(b) any other assistance which the Commission may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the OFT to give.

(2) The OFT shall give the Commission any information in its possession which has not been requested by the Commission but which, in the opinion of the OFT, would be appropriate to give to the Commission for the purpose of assisting it in carrying out its functions under this Part.

(3) The OFT and the Commission shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone—

(a) such information in their possession as the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require to enable him to carry out his functions under this Part; and

(b) any other assistance which the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the OFT or (as the case may be) the Commission to give.

(4) The OFT shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone any information in its possession which has not been requested by the Secretary of State or (as the case may be) the appropriate Minister concerned but which, in the opinion of the OFT, would be appropriate to give to the Secretary of State or (as the case may be) the appropriate Minister concerned for the purpose of assisting him in carrying out his functions under this Part.

(5) The Commission shall have regard to any information given to it under subsection (1) or (2); and the Secretary of State or (as the case may be) the appropriate Minister

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concerned shall have regard to any information given to him under subsection (3) or (4).

(6) Any direction given under subsection (3)—

(a) shall be in writing; and

(b) may be varied or revoked by a subsequent direction.

171 Advice and information: Part 4

(1) As soon as reasonably practicable after the passing of this Act, the OFT shall prepare and publish general advice and information about the making of references by it under section 131.

(2) The OFT may at any time publish revised, or new, advice or information.

(3) As soon as reasonably practicable after the passing of this Act, the Commission shall prepare and publish general advice and information about the consideration by it of market investigation references and the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.

(4) The Commission may at any time publish revised, or new, advice or information.

(5) Advice and information published under this section shall be prepared with a view to—

(a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and

(b) indicating how the OFT or (as the case may be) the Commission expects such provisions to operate.

(6) Advice and information published by virtue of subsection (1) or (3) shall include such advice and information about the effect of **[**F20EU**]** law, and anything done under or in accordance with it, on the provisions of this Part as the OFT or (as the case may be) the Commission considers appropriate.

(7) Advice (or information) published by virtue of subsection (1) or (3) may include advice (or information) about the factors which the OFT or (as the case may be) the Commission may take into account in considering whether, and if so how, to exercise a function conferred by this Part.

(8) Any advice or information published by the OFT or the Commission under this section shall be published in such manner as the OFT or (as the case may be) the Commission considers appropriate.

(9) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.

(10) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.

(11) In this section "**[**F20EU**]** law" means—

(a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the **[**F20EU**]** Treaties; and

(b) all the remedies and procedures from time to time provided for by or under the **[**F20EU**]** Treaties.

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Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

172 Further publicity requirements: Part 4

(1) The OFT shall publish—

(a) any reference made by it under section 131;

(b) any variation made by it under section 135 of a reference under section 131;

(c) any decision of a kind mentioned in section 149(5)(b); and

(d) such information as it considers appropriate about any decision made by it under section 152(1) to bring a case to the attention of the Secretary of State.

(2) The Commission shall publish—

(a) any decision made by it under section 138(2) neither to accept an undertaking under section 159 nor to make an order under section 161;

(b) any decision made by it that there has been a material change of circumstances as mentioned in section 138(3) or there is another special reason as mentioned in that section;

(c) any termination under section 145(1) of an investigation by it;

(d) such information as it considers appropriate about any decision made by it under section 152(2) to bring a case to the attention of the Secretary of State;

(e) any enforcement undertaking accepted by it under section 157;

(f) any enforcement order made by it under section 158; and

(g) any variation, release or revocation of such an undertaking or order.

(3) The Secretary of State shall publish—

(a) any reference made by him under section 132;

(b) any variation made by him under section 135 of a reference under section 132;

(c) any intervention notice given by him;

(d) any decision made by him to revoke such a notice;

(e) any decision made by him under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161;

(f) any enforcement undertaking accepted by him under section 157;

(g) any variation or release of such an undertaking; and

(h) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).

(4) The appropriate Minister (other than the Secretary of State acting alone) shall publish—

(a) any reference made by him under section 132;

(b) any variation made by him under section 135 of a reference under section 132; and

(c) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).

(5) Where any person is under an obligation by virtue of subsection (1), (2), (3) or (4) to publish the result of any action taken by that person or any decision made by that

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person, the person concerned shall, subject to subsections (6) and (7), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.

(6) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.

(7) Subsections (5) and (6) shall not apply in relation to any case falling within subsection (1)(d) or (2)(d).

(8) The Secretary of State shall publish his reasons for—

(a) any decision made by him under section 146(2); or

(b) any decision to make an order under section 153(3) or vary or revoke such an order.

(9) Such reasons may be published after—

(a) in the case of subsection (8)(a), the publication of the decision concerned; and

(b) in the case of subsection (8)(b), the making of the order or of the variation or revocation;

if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.

(10) Where the Secretary of State has decided under section 147(2) to accept an undertaking under section 159 or to make an order under section 161, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the Commission's report under section 142, before each House of Parliament.

173 Defamation: Part 4

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, by the Secretary of State, by the appropriate Minister (other than the Secretary of State acting alone) or by the Commission in the exercise of any of their functions under this Part.

Investigation powers

174 Investigation powers of OFT

(1) The OFT may exercise any of the powers in subsections (3) to (5) for the purpose of assisting it in deciding whether to make a reference under section 131 or to accept undertakings under section 154 instead of making such a reference.

(2) The OFT shall not exercise any of the powers in subsections (3) to (5) for the purpose of assisting it as mentioned in subsection (1) unless it already believes that it has power to make such a reference.

(3) The OFT may give notice to any person requiring him—

(a) to attend at a time and place specified in the notice; and

(b) to give evidence to the OFT or a person nominated by the OFT for the purpose.

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(4) The OFT may give notice to any person requiring him—

(a) to produce any documents which—

(i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and

(ii) are in that person's custody or under his control; and

(b) to produce them at a time and place so specified and to a person so specified.

(5) The OFT may give notice to any person who carries on any business requiring him—

(a) to supply to the OFT such estimates, forecasts, returns or other information as may be specified or described in the notice; and

(b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.

(6) A notice under this section shall include information about the possible consequences of not complying with the notice.

(7) The person to whom any document is produced in accordance with a notice under this section may, for the purpose mentioned in subsection (1), copy the document so produced.

(8) No person shall be required under this section—

(a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or

(b) to supply any information which he could not be compelled to supply in evidence in such proceedings.

(9) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.

(10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

(11) In this section "the court" means—

(a) in relation to England and Wales or Northern Ireland, the High Court; and

(b) in relation to Scotland, the Court of Session.

175 Enforcement of powers under section 174: offences

(1) A person commits an offence if he, intentionally and without reasonable excuse, fails to comply with any requirement of a notice under section 174.

(2) A person commits an offence if he intentionally and without reasonable excuse alters, suppresses or destroys any document which he has been required to produce by a notice under section 174.

(3) A person who commits an offence under subsection (1) or (2) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

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

(4) A person commits an offence if he intentionally obstructs or delays—

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(a) the OFT in the exercise of its powers under section 174; or

(b) any person in the exercise of his powers under subsection (7) of that section.

(5) A person who commits an offence under subsection (4) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

176 Investigation powers of the Commission

(1) The following sections in Part 3 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under this Part as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc.);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

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

(a) subsection (2) were omitted; and

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

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

(a) for the words "section 50 or 65, given" there were substituted " section 142, published or given under section 143(1) or (3) "; and

(b) for the words "(or given)", in both places where they appear, there were substituted " (or published or given) ".

Reports

177 Excisions from reports: Part 4

(1) Subsection (2) applies where the Secretary of State is under a duty to publish a report of the Commission under section 142.

(2) The Secretary of State may exclude a matter from the report if he considers that publication of the matter would be inappropriate.

(3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.

(4) The Commission shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).

(5) References in sections 136(4) to (6), 143(2) and (5) to (7), 148(3) to (5) and 172(10) to the giving or laying of a report of the Commission shall be construed as references to the giving or laying of the report as published.

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178 Minority reports of Commission: Part 4

(1) Subsection (2) applies where, on a market investigation reference, a member of a group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41), disagrees with any decisions contained in the report of the Commission under this Part as the decisions of the Commission.

(2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

Other

179 Review of decisions under Part 4

(1) Any person aggrieved by a decision of the OFT, the appropriate Minister, the Secretary of State or the Commission in connection with a reference or possible reference under this Part may apply to the Competition Appeal Tribunal for a review of that decision.

(2) For this purpose "decision"—

(a) does not include a decision to impose a penalty under section 110(1) or (3) as applied by section 176; but

(b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.

(3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.

(4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.

(5) The Competition Appeal Tribunal may—

(a) dismiss the application or quash the whole or part of the decision to which it relates; and

(b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.

(6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.

(7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.

(8) In this section—

"the appropriate court" means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and

"Tribunal rules" has the meaning given by section 15(1).

180 Offences

(1) Sections 117 (false or misleading information) and 125 (offences by bodies corporate) shall apply, with the modifications mentioned in subsection (2) below, for the purposes of this Part as they apply for the purposes of Part 3.

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(2) Section 117 shall, in its application by virtue of subsection (1) above, have effect as if references to the Secretary of State included references to the appropriate Minister so far as he is not the Secretary of State acting alone **[**[F176]and as if the references to OFCOM were omitted**]** .

Textual Amendments

F176 Words in s. 180(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 26** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

181 Orders under Part 4

(1) Any power of the Secretary of State to make an order under this Part shall be exercisable by statutory instrument.

(2) Any power of the Secretary of State to make an order under this Part—

(a) may be exercised so as to make different provision for different cases or different purposes;

(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.

(3) The power of the Secretary of State under section 136(9), 137(3), 144(2), 153(3) or 168(8) as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.

(4) An order made by the Secretary of State under section 137(3), 144(2), 158, 160 or 161, or under section 111(4) or (6) or 114(3)(b) or (4)(b) as applied by section 176, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) No order shall be made by the Secretary of State under section 136(9) or 168(8), or section 128(6) as applied by section 183(2), unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

(6) An order made by the Secretary of State under section 153(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.

(7) In calculating the period of 28 days mentioned in subsection (6), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(8) If an order made by the Secretary of State ceases to have effect by virtue of subsection (6), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.

(9) If, apart from this subsection, an order made by the Secretary of State under section 153(3) would be treated for the purposes of the standing orders of either House

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of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

(10) References in this section to an order made under this Part include references to an order made under section 111(4) or (6) or 114(3)(b) or (4)(b) as applied by section 176 and an order made under section 128(6) as applied by section 183(2).

182 Service of documents: Part 4

Section 126 shall apply for the purposes of this Part as it applies for the purposes of Part 3.

183 Interpretation: Part 4

(1) In this Part, unless the context otherwise requires—

"action" includes omission; and references to the taking of action include references to refraining from action;

"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;

"change of circumstances" includes any discovery that information has been supplied which is false or misleading in a material respect;

"consumer" means any person who is—

(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;

"customer" includes a customer who is not a consumer;

"enactment" includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;

"goods" includes buildings and other structures, and also includes ships, aircraft and hovercraft;

"Minister of the Crown" means the holder of an office in Her Majesty's Government in the United Kingdom and includes the Treasury;

"modify" includes amend or repeal;

"notice" means notice in writing;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation; and

"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.

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(2) Sections 127(1)(b) and (4) to (6) and 128 shall apply for the purposes of this Part as they apply for the purposes of Part 3.

(3) For the purposes of this Part a market investigation reference is finally determined if—

(a) where no intervention notice under section 139(1) has been given in relation to it—

(i) the period permitted by section 137 for preparing and publishing a report under section 136 has expired and no such report has been prepared and published;

(ii) such a report has been prepared and published within the period permitted by section 137 and contains the decision that there is no adverse effect on competition;

(iii) the Commission has decided under section 138(2) neither to accept undertakings under section 159 nor to make an order under section 161; or

(iv) the Commission has accepted an undertaking under section 159 or made an order under section 161;

(b) where an intervention notice under section 139(1) has been given in relation to it—

(i) the period permitted by section 144 for the preparation of the report of the Commission under section 142 and for action to be taken in relation to it under section 143(1) or (3) has expired while the intervention notice is still in force and no such report has been so prepared or no such action has been taken;

(ii) the Commission has terminated under section 145(1) its investigation and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(iii) the report of the Commission has been prepared under section 142 and published under section 143(1) within the period permitted by section 144;

(iv) the intervention notice was revoked and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(v) the Secretary of State has failed to make and publish a decision under subsection (2) of section 146 within the period permitted by subsection (3) of that section and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(vi) the Secretary of State has decided under section 146(2) that no eligible public interest consideration is relevant and the reference is finally determined under paragraph (a) above (disregarding the fact that the notice was given);

(vii) the Secretary of State has decided under 146(2) that a public interest consideration is relevant but has decided under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161; or

(viii) the Secretary of State has decided under section 146(2) that a public interest consideration is relevant and has accepted an undertaking under section 159 or made an order under section 161.

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(4) For the purposes of this Part the time when a market investigation reference is finally determined is—

(a) in a case falling within subsection (3)(a)(i) or (b)(i), the expiry of the time concerned;

(b) in a case falling within subsection (3)(a)(ii) or (b)(iii), the publication of the report;

(c) in a case falling within subsection (3)(a)(iv) or (b)(viii), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned; and

(d) in any other case, the making of the decision or last decision concerned or the taking of the action concerned.

(5) The references in subsection (4) to subsections (3)(a)(i), (ii) and (iv) include those enactments as applied by subsection (3)(b)(ii), (iv), (v) or (vi).

(6) In subsection (4)(c) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action concerned involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (3)(a)(iv) and (b)(viii) and (4)(c).

(7) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as that person considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

184 Index of defined expressions: Part 4

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

Expression	*Provision of this Act*
Action (and the taking of action)	Section 183(1)
Adverse effect on competition	Section 134(2)
Appropriate Minister	Section 132(5)
Business	Section 183(1)
Change of circumstances	Section 183(1)
The Commission	Section 273
Consumer	Section 183(1)
Customer	Section 183(1)
Date of market investigation reference	Section 137(7)
Detrimental effect on customers	Section 134(5)
Enactment	Section 183(1)

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Enforcement order	Section 162(8)
Enforcement undertaking	Section 162(8)
Feature of a market	Section 131(2)
Final determination of market investigation reference	Section 183(3) to (6)
Goods	Section 183(1)
Intervention notice	Section 139(3)
Market for goods or services	Section 131(6)
Market in the United Kingdom	Section 131(6)
Market investigation reference	Section 131(6)
Minister of the Crown	Section 183(1)
Modify	Section 183(1)
Notice	Section 183(1)
The OFT	Section 273
Public interest consideration	Section 139(5)
Public interest consideration being finalised	Section 139(7)
Publish	Section 183(7)
Relevant customer benefit	Section 134(8)
Relevant sectoral enactment	Section 136(7)
Relevant sectoral regulator	Section 136(8)
Reports of the Commission	Section 177(5)
Subordinate legislation	Section 183(1)
Supply (in relation to the supply of goods)	Section 183(1)
The supply of services (and a market for services etc.)	Section 183(2)

PART 5

THE COMPETITION COMMISSION

185 The Commission

Schedule 11 (which amends provisions relating to the constitution and powers of the Commission under Schedule 7 to the 1998 Act) has effect.

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Commencement Information

I3 S. 185 partly in force; s. 185 not in force at Royal Assent see s. 279; s. 185 in force for certain purposes at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., s. 185 in force for certain further purposes at 20.6.2003 by S.I. 2003/1397, **art. 2(1)**, Sch., s. 185 in force for certain further purposes at 29.12.2004 by S.I. 2004/3233, **art. 2**, Sch.

186 Annual report of Commission

After paragraph 12 of Schedule 7 to the 1998 Act (the Competition Commission) there is inserted—

"**Annual reports**

12A (1) The Commission shall make to the Secretary of State a report for each financial year on its activities during the year.

(2) The annual report must be made before the end of August next following the financial year to which it relates.

(3) The Secretary of State shall lay a copy of the annual report before Parliament and arrange for the report to be published."

187 Commission rules of procedure

(1) In section 45(7) of the 1998 Act (the Competition Commission) for the words "Schedule 7 makes" there shall be substituted " Schedules 7 and 7A make ".

(2) In paragraph 19 of Schedule 7 to that Act, after sub-paragraph (4), there shall be inserted—

"(5) This paragraph does not apply to groups for which rules must be made under paragraph 19A."

(3) After paragraph 19 of that Schedule to that Act there shall be inserted—

"19A (1) The Chairman must make rules of procedure in relation to merger reference groups, market reference groups and special reference groups.

(2) Schedule 7A makes further provision about rules made under this paragraph but is not to be taken as restricting the Chairman's powers under this paragraph.

(3) The Chairman must publish rules made under this paragraph in such manner as he considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) The Chairman must consult the members of the Commission and such other persons as he considers appropriate before making rules under this paragraph.

(5) Rules under this paragraph may—

(a) make different provision for different cases or different purposes;

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(b) be varied or revoked by subsequent rules made under this paragraph.

(6) Subject to rules made under this paragraph, each merger reference group, market reference group and special reference group may determine its own procedure.

(7) In determining how to proceed in accordance with rules made under this paragraph and in determining its procedure under sub-paragraph (6), a group must have regard to any guidance issued by the Chairman.

(8) Before issuing any guidance for the purposes of this paragraph the Chairman shall consult the members of the Commission and such other persons as he considers appropriate.

(9) In this paragraph and in Schedule 7A—

"market reference group" means any group constituted in connection with a reference under section 131 or 132 of the Enterprise Act 2002 (including that section as it has effect by virtue of another enactment);

"merger reference group" means any group constituted in connection with a reference under section 59 of the Fair Trading Act 1973 (c. 41), section 32 of the Water Industry Act 1991 (c. 56) or section 22, 33, 45 or 62 of the Enterprise Act 2002; and

"special reference group" means any group constituted in connection with a reference or (in the case of the Financial Services and Markets Act 2000 (c. 8)) an investigation under—

(a) section 11 of the Competition Act 1980 (c. 21);
(b) section 13 of the Telecommunications Act 1984 (c. 12);
(c) section 43 of the Airports Act 1986 (c. 31);
(d) section 24 or 41E of the Gas Act 1986 (c. 44);
(e) section 12 or 56C of the Electricity Act 1989 (c. 29);
(f) Schedule 4 to the Broadcasting Act 1990 (c. 42);
(g) section 12 or 14 of the Water Industry Act 1991 (c. 56);
(h) article 15 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
(i) section 13 of, or Schedule 4A to, the Railways Act 1993 (c. 43);
(j) article 34 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1));
(k) article 15 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
(l) section 15 of the Postal Services Act 2000 (c. 26);
(m) section 162 or 306 of the Financial Services and Markets Act 2000 (c. 8); or
(n) section 12 of the Transport Act 2000 (c. 38)."

(4) After Schedule 7 to that Act there shall be inserted, as Schedule 7A, the Schedule set out in Schedule 12 to this Act.

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PART 6

CARTEL OFFENCE

Cartel offence

188 Cartel offence

(1) An individual is guilty of an offence if he dishonestly agrees with one or more other persons to make or implement, or to cause to be made or implemented, arrangements of the following kind relating to at least two undertakings (A and B).

(2) The arrangements must be ones which, if operating as the parties to the agreement intend, would—

(a) directly or indirectly fix a price for the supply by A in the United Kingdom (otherwise than to B) of a product or service,

(b) limit or prevent supply by A in the United Kingdom of a product or service,

(c) limit or prevent production by A in the United Kingdom of a product,

(d) divide between A and B the supply in the United Kingdom of a product or service to a customer or customers,

(e) divide between A and B customers for the supply in the United Kingdom of a product or service, or

(f) be bid-rigging arrangements.

(3) Unless subsection (2)(d), (e) or (f) applies, the arrangements must also be ones which, if operating as the parties to the agreement intend, would—

(a) directly or indirectly fix a price for the supply by B in the United Kingdom (otherwise than to A) of a product or service,

(b) limit or prevent supply by B in the United Kingdom of a product or service, or

(c) limit or prevent production by B in the United Kingdom of a product.

(4) In subsections (2)(a) to (d) and (3), references to supply or production are to supply or production in the appropriate circumstances (for which see section 189).

(5) "Bid-rigging arrangements" are arrangements under which, in response to a request for bids for the supply of a product or service in the United Kingdom, or for the production of a product in the United Kingdom—

(a) A but not B may make a bid, or

(b) A and B may each make a bid but, in one case or both, only a bid arrived at in accordance with the arrangements.

(6) But arrangements are not bid-rigging arrangements if, under them, the person requesting bids would be informed of them at or before the time when a bid is made.

(7) "Undertaking" has the same meaning as in Part 1 of the 1998 Act.

189 Cartel offence: supplementary

(1) For section 188(2)(a), the appropriate circumstances are that A's supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by B in the United Kingdom.

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(2) For section 188(2)(b), the appropriate circumstances are that A's supply of the product or service would be at a level in the supply chain—

(a) at which the product or service would at the same time be supplied by B in the United Kingdom, or

(b) at which supply by B in the United Kingdom of the product or service would be limited or prevented by the arrangements.

(3) For section 188(2)(c), the appropriate circumstances are that A's production of the product would be at a level in the production chain—

(a) at which the product would at the same time be produced by B in the United Kingdom, or

(b) at which production by B in the United Kingdom of the product would be limited or prevented by the arrangements.

(4) For section 188(2)(d), the appropriate circumstances are that A's supply of the product or service would be at the same level in the supply chain as B's.

(5) For section 188(3)(a), the appropriate circumstances are that B's supply of the product or service would be at a level in the supply chain at which the product or service would at the same time be supplied by A in the United Kingdom.

(6) For section 188(3)(b), the appropriate circumstances are that B's supply of the product or service would be at a level in the supply chain—

(a) at which the product or service would at the same time be supplied by A in the United Kingdom, or

(b) at which supply by A in the United Kingdom of the product or service would be limited or prevented by the arrangements.

(7) For section 188(3)(c), the appropriate circumstances are that B's production of the product would be at a level in the production chain—

(a) at which the product would at the same time be produced by A in the United Kingdom, or

(b) at which production by A in the United Kingdom of the product would be limited or prevented by the arrangements.

190 Cartel offence: penalty and prosecution

(1) A person guilty of an offence under section 188 is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(2) In England and Wales and Northern Ireland, proceedings for an offence under section 188 may be instituted only—

(a) by the Director of the Serious Fraud Office, or

(b) by or with the consent of the OFT.

(3) No proceedings may be brought for an offence under section 188 in respect of an agreement outside the United Kingdom, unless it has been implemented in whole or in part in the United Kingdom.

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(4) Where, for the purpose of the investigation or prosecution of offences under section 188, the OFT gives a person written notice under this subsection, no proceedings for an offence under section 188 that falls within a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.

191 Extradition

F177 . . . . . .

Textual Amendments

F177 S. 191 repealed (1.1.2004) by Extradition Act 2003 (c. 41), ss. 219, 220, 221, Sch. 3 para. 14, **Sch. 4**; S.I. 2003/3103, **art. 2** (subject to savings in arts. 3-5 (as amended by S.I. 2003/3258, art. 3(2) and S.I. 2003/3312, art. 2(2)))

Criminal investigations by OFT

192 Investigation of offences under section 188

(1) The OFT may conduct an investigation if there are reasonable grounds for suspecting that an offence under section 188 has been committed.

(2) The powers of the OFT under sections 193 and 194 are exercisable, but only for the purposes of an investigation under subsection (1), in any case where it appears to the OFT that there is good reason to exercise them for the purpose of investigating the affairs, or any aspect of the affairs, of any person ("the person under investigation").

193 Powers when conducting an investigation

(1) The OFT may by notice in writing require the person under investigation, or any other person who it has reason to believe has relevant information, to answer questions, or otherwise provide information, with respect to any matter relevant to the investigation at a specified place and either at a specified time or forthwith.

(2) The OFT may by notice in writing require the person under investigation, or any other person, to produce, at a specified place and either at a specified time or forthwith, specified documents, or documents of a specified description, which appear to the OFT to relate to any matter relevant to the investigation.

(3) If any such documents are produced, the OFT may—

(a) take copies or extracts from them;

(b) require the person producing them to provide an explanation of any of them.

(4) If any such documents are not produced, the OFT may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) A notice under subsection (1) or (2) must indicate—

(a) the subject matter and purpose of the investigation; and

(b) the nature of the offences created by section 201.

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PROSPECTIVE

194 Power to enter premises under a warrant

(1) **[**F178On an application made to it by the CMA or, in Scotland, the procurator fiscal, the appropriate body may issue a warrant if it is satisfied**]** that there are reasonable grounds for believing—

(a) that there are on any premises documents which the **[**F179CMA**]** has power under section 193 to require to be produced for the purposes of an investigation; and

(b) that—

(i) a person has failed to comply with a requirement under that section to produce the documents;

(ii) it is not practicable to serve a notice under that section in relation to them; or

(iii) the service of such a notice in relation to them might seriously prejudice the investigation.

[F180(1A) In subsection (1), "appropriate body" means—

(a) in England and Wales and Northern Ireland, the High Court or the Competition Appeal Tribunal;

(b) in Scotland, the sheriff.**]**

(2) A warrant under this section shall authorise a named officer of the **[**F179CMA**]**, and any other officers of the **[**F179CMA**]** whom the **[**F179CMA**]** has authorised in writing to accompany the named officer—

(a) to enter the premises, using such force as is reasonably necessary for the purpose;

(b) to search the premises and—

(i) take possession of any documents appearing to be of the relevant kind, or

(ii) take, in relation to any documents appearing to be of the relevant kind, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

(d) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) Documents are of the relevant kind if they are of a kind in respect of which the application under subsection (1) was granted.

(4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

[F181(4A) An application for a warrant under this section must be made—

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(a) in the case of an application to the High Court or the sheriff, in accordance with rules of court;

(b) in the case of an application to the Competition Appeal Tribunal, in accordance with rules made under section 15.**]**

(5) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 of that Act applies), after paragraph 73 there is inserted—

"**Enterprise Act 2002**

73B The power of seizure conferred by section 194(2) of the Enterprise Act 2002 (seizure of documents for the purposes of an investigation under section 192(1) of that Act)."

Textual Amendments

F178 Words in s. 194(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 48(2)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

F179 Word in s. 194(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 213** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F180 S. 194(1A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 48(3)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

F181 S. 194(4A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 48(4)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

195 Exercise of powers by authorised person

(1) The OFT may authorise any competent person who is not an officer of the OFT to exercise on its behalf all or any of the powers conferred by section 193 or 194.

(2) No such authority may be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(3) No person is bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under this section unless he has, if required to do so, produced evidence of his authority.

196 Privileged information etc.

(1) A person may not under section 193 or 194 be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.

(2) A person may not under section 193 or 194 be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business unless—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(b) the OFT has authorised the making of the requirement.

(3) In the application of this section to Scotland, the reference in subsection (1)—

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(a) to proceedings in the High Court is to be read as a reference to legal proceedings generally; and

(b) to an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement by virtue of any rule of law whereby—

(i) communications between a professional legal adviser and his client, or

(ii) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

are in such proceedings protected from disclosure on the ground of confidentiality.

197 Restriction on use of statements in court

(1) A statement by a person in response to a requirement imposed by virtue of section 193 or 194 may only be used in evidence against him—

(a) on a prosecution for an offence under section 201(2); or

(b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(2) However, the statement may not be used against that person by virtue of paragraph (b) of subsection (1) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of that person in the proceedings arising out of the prosecution.

198 Use of statements obtained under Competition Act 1998

In the 1998 Act, after section 30 there is inserted—

"**30A Use of statements in prosecution**

A statement made by a person in response to a requirement imposed by virtue of any of sections 26 to 28 may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

(a) in giving evidence, he makes a statement inconsistent with it, and

(b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf."

199 Surveillance powers

(1) The Regulation of Investigatory Powers Act 2000 (c. 23) is amended as follows.

(2) In section 32 (authorisation of intrusive surveillance)—

(a) after subsection (3) there is inserted—

"(3A) In the case of an authorisation granted by the chairman of the OFT, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002 (cartel offence).";

(b) in subsection (6) after paragraph (m) there is inserted "; and

(n) the chairman of the OFT."

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(3) In section 33 (rules for grant of authorisations) after subsection (4) there is inserted—

"(4A) The chairman of the OFT shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the OFT."

(4) In subsection (5)(a) of that section, after "officer" there is inserted " or the chairman or an officer of the OFT ".

(5) In section 34 (grant of authorisation in the senior officer's absence)—

(a) in subsection (1)(a), after "or by" there is inserted " an officer of the OFT or ";

(b) in subsection (2)(a), after "may be," there is inserted " as chairman of the OFT or ";

(c) in subsection (4), after paragraph (l) there is inserted—

"(m) a person is entitled to act for the chairman of the OFT if he is an officer of the OFT designated by it for the purposes of this paragraph as a person entitled so to act in an urgent case."

(6) In section 35 (notification of authorisations for intrusive surveillance)—

(a) in subsections (1) and (10), for "or customs" there is substituted " , customs or OFT ";

(b) in subsection (10), after paragraph (b) there is inserted—

"(ba) the chairman of the OFT; or";

(c) in paragraph (c) of that subsection, at the end there is inserted " or for a person falling within paragraph (ba). "

(7) In section 36 (approval required for authorisations to take effect)—

(a) in subsection (1), after paragraph (d) there is inserted "; or

(e) an officer of the OFT.";

(b) in subsection (6), after paragraph (g) there is inserted "; and

(h) where the authorisation was granted by the chairman of the OFT or a person entitled to act for him by virtue of section 34(4)(m), that chairman."

(8) In section 37 (quashing of police and customs authorisations etc.) in subsection (1), after paragraph (d) there is inserted "; or

(e) an officer of the OFT."

(9) In section 40 (information to be provided to Surveillance Commissioners) after paragraph (d) there is inserted ", and

(e) every officer of the OFT,".

(10) In section 46 (restrictions on authorisations extending to Scotland), in subsection (3), after paragraph (d) there is inserted—

"(da) the OFT;".

(11) In section 48 (interpretation of Part 2), in subsection (1), after the entry relating to "directed" and "intrusive" there is inserted—

""OFT" means the Office of Fair Trading;".

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200 Authorisation of action in respect of property

(1) Part 3 of the Police Act 1997 (c. 50) (authorisation of action in respect of property) is amended as follows.

(2) In section 93 (authorisation to interfere with property etc.)—

(a) in subsection (1B), after "customs officer" there is inserted " or an officer of the Office of Fair Trading ";

(b) after subsection (2A) there is inserted—

"(2AA) Where the authorising officer is the chairman of the Office of Fair Trading, the only purpose falling within subsection (2)(a) is the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002.";

(c) in subsection (3), after paragraph (d) there is inserted ", or

(e) if the authorising officer is within subsection (5)(i), by an officer of the Office of Fair Trading.";

(d) in subsection (5), after paragraph (h) there is inserted "; or

(i) the chairman of the Office of Fair Trading."

(3) In section 94 (authorisation given in absence of authorising officer) in subsection (2), after paragraph (f) there is inserted—

"(g) where the authorising officer is within paragraph (i) of that subsection, by an officer of the Office of Fair Trading designated by it for the purposes of this section."

201 Offences

(1) Any person who without reasonable excuse fails to comply with a requirement imposed on him under section 193 or 194 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(2) A person who, in purported compliance with a requirement under section 193 or 194—

(a) makes a statement which he knows to be false or misleading in a material particular; or

(b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

(3) A person guilty of an offence under subsection (2) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; and

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(4) Where any person—

(a) knows or suspects that an investigation by the Serious Fraud Office or the OFT into an offence under section 188 is being or is likely to be carried out; and

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation,

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he is guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from the persons carrying out such an investigation.

(5) A person guilty of an offence under subsection (4) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both; and

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(6) A person who intentionally obstructs a person in the exercise of his powers under a warrant issued under section 194 is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both; and

(b) on summary conviction, to a fine not exceeding the statutory maximum.

202 Interpretation of sections 192 to 201

In sections 192 to 201—

"documents" includes information recorded in any form and, in relation to information recorded otherwise than in a form in which it is visible and legible, references to its production include references to producing it in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form;

"person under investigation" has the meaning given in section 192(2).

PART 7

MISCELLANEOUS COMPETITION PROVISIONS

Powers of entry under 1998 Act

203 Powers of entry

(1) The 1998 Act is amended as follows.

(2) In section 28 (power to enter premises under a warrant), after subsection (3) there is inserted—

"(3A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it."

(3) In section 62 (power to enter premises: Commission investigations), after subsection (5) there is inserted—

"(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it."

(4) In section 63 (power to enter premises: Director's special investigations), after subsection (5) there is inserted—

"(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named authorised officer who is executing it."

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Directors disqualification

204 Disqualification

(1) The Company Directors Disqualification Act 1986 (c. 46) is amended as follows.

(2) The following sections are inserted after section 9 (matters for determining unfitness in certain cases)—

"Disqualification for competition infringements

9A Competition disqualification order

(1) The court must make a disqualification order against a person if the following two conditions are satisfied in relation to him.

(2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.

(3) The second condition is that the court considers that his conduct as a director makes him unfit to be concerned in the management of a company.

(4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following—

(a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc. preventing, restricting or distorting competition);

(b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);

(c) Article 81 of the Treaty establishing the European Community (prohibition on agreements, etc. preventing, restricting or distorting competition);

(d) Article 82 of that Treaty (prohibition on abuse of a dominant position).

(5) For the purpose of deciding under subsection (3) whether a person is unfit to be concerned in the management of a company the court—

(a) must have regard to whether subsection (6) applies to him;

(b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;

(c) must not have regard to the matters mentioned in Schedule 1.

(6) This subsection applies to a person if as a director of the company—

(a) his conduct contributed to the breach of competition law mentioned in subsection (2);

(b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;

(c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.

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(7) For the purposes of subsection (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.

(8) For the purposes of subsection (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.

(9) The maximum period of disqualification under this section is 15 years.

(10) An application under this section for a disqualification order may be made by the OFT or by a specified regulator.

(11) Section 60 of the Competition Act 1998 (c. 41) (consistent treatment of questions arising under United Kingdom and Commnunity law) applies in relation to any question arising by virtue of subsection (4)(a) or (b) above as it applies in relation to any question arising under Part 1 of that Act.

9B Competition undertakings

(1) This section applies if—

(a) the OFT or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,

(b) the OFT or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and

(c) the person offers to give the OFT or the specified regulator (as the case may be) a disqualification undertaking.

(2) The OFT or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.

(3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—

(a) be a director of a company;

(b) act as receiver of a company's property;

(c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;

(d) act as an insolvency practitioner.

(4) But a disqualification undertaking may provide that a prohibition falling within subsection (3)(a) to (c) does not apply if the person obtains the leave of the court.

(5) The maximum period which may be specified in a disqualification undertaking is 15 years.

(6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Act or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.

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(7) Subsections (4) to (8) of section 9A apply for the purposes of this section as they apply for the purposes of that section but in the application of subsection (5) of that section the reference to the court must be construed as a reference to the OFT or a specified regulator (as the case may be).

9C Competition investigations

(1) If the OFT or a specified regulator has reasonable grounds for suspecting that a breach of competition law has occurred it or he (as the case may be) may carry out an investigation for the purpose of deciding whether to make an application under section 9A for a disqualification order.

(2) For the purposes of such an investigation sections 26 to 30 of the Competition Act 1998 (c. 41) apply to the OFT and the specified regulators as they apply to the OFT for the purposes of an investigation under section 25 of that Act.

(3) Subsection (4) applies if as a result of an investigation under this section the OFT or a specified regulator proposes to apply under section 9A for a disqualification order.

(4) Before making the application the OFT or regulator (as the case may be) must—

(a) give notice to the person likely to be affected by the application, and

(b) give that person an opportunity to make representations.

9D Co-ordination

(1) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under sections 9A to 9C (relevant functions) which are exercisable concurrently by two or more persons.

(2) Section 54(5) to (7) of the Competition Act 1998 (c. 41) applies to regulations made under this section as it applies to regulations made under that section and for that purpose in that section—

(a) references to Part 1 functions must be read as references to relevant functions;

(b) references to a regulator must be read as references to a specified regulator;

(c) a competent person also includes any of the specified regulators.

(3) The power to make regulations under this section must be exercised by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Such a statutory instrument may—

(a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks appropriate;

(b) make different provision for different cases.

9E Interpretation

(1) This section applies for the purposes of sections 9A to 9D.

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(2) Each of the following is a specified regulator for the purposes of a breach of competition law in relation to a matter in respect of which he or it has a function—

(a) the Director General of Telecommunications;

(b) the Gas and Electricity Markets Authority;

(c) the Director General of Water Services;

(d) the Rail Regulator;

(e) the Civil Aviation Authority.

(3) The court is the High Court or (in Scotland) the Court of Session.

(4) Conduct includes omission.

(5) Director includes shadow director."

(3) In section 1(1) (general provision about disqualification orders) for "section 6" substitute " sections 6 and 9A ".

(4) In section 8A (variation etc of disqualification undertaking) after subsection (2) there is inserted the following subsection—

"(2A) Subsection (2) does not apply to an application in the case of an undertaking given under section 9B, and in such a case on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of section 9E) accepted the undertaking—

(a) must appear and call the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;

(b) may give evidence or call witnesses."

(5) In section 8A for subsection (3) there is substituted—

"(3) In this section "the court"—

(a) in the case of an undertaking given under section 9B means the High Court or (in Scotland) the Court of Session;

(b) in any other case has the same meaning as in section 7(2) or 8 (as the case may be)."

(6) In section 16(3) for "the Secretary of State or the official receiver or the liquidator" substitute " a person falling within subsection (4) ".

(7) In section 16 after subsection (3) there is inserted the following subsection—

"(4) The following fall within this subsection—

(a) the Secretary of State;

(b) the official receiver;

(c) the OFT;

(d) the liquidator;

(e) a specified regulator (within the meaning of section 9E)."

(8) In section 17 (applications for leave under an order or undertaking) after subsection (3) there is inserted the following subsection—

"(3A) Where a person is subject to a disqualification undertaking accepted at any time under section 9B any application for leave for the purposes of

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section 9B(4) must be made to the High Court or (in Scotland) the Court of Session."

(9) In section 17(4) for "or 1A(1)(a)" substitute " 1A(1)(a) or 9B(4) ".

(10) In section 17 after subsection (5) there are inserted the following subsections—

"(6) Subsection (5) does not apply to an application for leave for the purposes of section 1(1)(a) if the application for the disqualification order was made under section 9A.

(7) In such a case and in the case of an application for leave for the purposes of section 9B(4) on the hearing of the application whichever of the OFT or a specified regulator (within the meaning of section 9E) applied for the order or accepted the undertaking (as the case may be)—

(a) must appear and draw the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;

(b) may give evidence or call witnesses."

(11) In section 18 (register of disqualification orders and undertakings) for subsection (2A) substitute—

"(2A) The Secretary of State must include in the register such particulars as he considers appropriate of—

(a) disqualification undertakings accepted by him under section 7 or 8;

(b) disqualification undertakings accepted by the OFT or a specified regulator under section 9B;

(c) cases in which leave has been granted as mentioned in subsection (1)(d)."

Miscellaneous

205 Super-complaints to regulators other than OFT

(1) The Secretary of State may by order provide that section 11 is to apply to complaints made to a specified regulator in relation to a market of a specified description as it applies to complaints made to the OFT, with such modifications as may be specified.

(2) An order under this section—

(a) shall be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) In this section—

"regulator" has the meaning given in section 54(1) of the 1998 Act; and

"specified" means specified in the order.

206 Power to modify Schedule 8

(1) The Secretary of State may by order made by statutory instrument modify Schedule 8.

(2) An order under this section may make—

(a) different provision for different cases or different purposes;

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(b) such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.

(3) An order under this section may, in particular, modify that Schedule in its application by virtue of Part 3 of this Act, in its application by virtue of Part 4 of this Act, in its application by virtue of any other enactment (whether by virtue of Part 4 of this Act as applied by that enactment or otherwise) or in its application by virtue of every enactment that applies it.

(4) An order under this section as extended by subsection (2) may modify any enactment comprised in or made under this Act, or any other enactment.

(5) No order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

(6) No modification of Schedule 8 in its application by virtue of Part 3 of this Act shall be made by an order under this section if the modification relates to a relevant merger situation or (as the case may be) a special merger situation which has been created before the coming into force of the order.

(7) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 22, 33, 45 or 62 before the coming into force of the order.

(8) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 131 or 132 before the coming into force of the order (including references made under section 131 as applied by another enactment).

(9) Before making an order under this section, the Secretary of State shall consult the OFT and the Commission.

(10) Expressions used in this section which are also used in Part 3 of this Act have the same meaning in this section as in that Part.

207 Repeal of Schedule 4 to the 1998 Act

Section 3(1)(d) of and Schedule 4 to the 1998 Act (which provide for the exclusion from the Chapter 1 prohibition in cases involving designated professional rules) shall cease to have effect.

208 Repeal of Part 6 of Fair Trading Act 1973

Sections 78 to 80 of the 1973 Act (references to Commission other than monopoly and merger references) shall cease to have effect.

209 Reform of [F182EU competition law]

(1) The Secretary of State may by regulations make such modifications of the 1998 Act as he considers appropriate for the purpose of eliminating or reducing any differences between—

(a) the domestic provisions of the 1998 Act, and

(b) **[**F183EU competition law**]** ,

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which result (or would otherwise result) from a relevant **[**F20EU**]** instrument made after the passing of this Act.

(2) In subsection (1)—

"the domestic provisions of the 1998 Act" means the provisions of the 1998 Act so far as they do not implement or give effect to a relevant **[**F20EU**]** instrument;

"**[**F184EU competition law**]**" includes any Act or subordinate legislation so far as it implements or gives effect to a relevant **[**F20EU**]** instrument;

"relevant **[**F20EU**]** instrument" means a regulation or directive under Article 83 of the Treaty establishing the **[**F4European Union**]** .

(3) The Secretary of State may by regulations repeal or otherwise modify any provision of an Act (other than the 1998 Act) which excludes any matter from the Chapter I prohibition or the Chapter II prohibition (within the meaning of Part 1 of the 1998 Act).

(4) The power under subsection (3) may not be exercised—

(a) before the power under subsection (1) has been exercised; or

(b) so as to extend the scope of any exclusion that is not being removed by the regulations.

(5) Regulations under this section may—

(a) confer power to make subordinate legislation;

(b) make such consequential, supplementary, incidental, transitory, transitional or saving provision as the Secretary of State considers appropriate (including provision modifying any Act or subordinate legislation); and

(c) make different provision for different cases or circumstances.

(6) The power to make regulations under this section is exercisable by statutory instrument.

(7) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of each House of Parliament.

(8) Paragraph 1(1)(c) of Schedule 2 to the European Communities Act 1972 (c. 68) (restriction on powers to legislate) shall not apply to regulations which implement or give effect to a relevant **[**F20EU**]** instrument made after the passing of this Act.

Textual Amendments

F4 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F182 Words in s. 209 heading substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F183 Words in s. 209(1)(b) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F184 Words in s. 209(2) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

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PART 8

ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

Introduction

210 Consumers

(1) In this Part references to consumers must be construed in accordance with this section.

(2) In relation to a domestic infringement a consumer is an individual in respect of whom the first and second conditions are satisfied.

(3) The first condition is that—

(a) goods are or are sought to be supplied to the individual (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) services are or are sought to be supplied to the individual in the course of a business carried on by the person supplying or seeking to supply them.

(4) The second condition is that—

(a) the individual receives or seeks to receive the goods or services otherwise than in the course of a business carried on by him, or

(b) the individual receives or seeks to receive the goods or services with a view to carrying on a business but not in the course of a business carried on by him.

(5) For the purposes of a domestic infringement it is immaterial whether a person supplying goods or services has a place of business in the United Kingdom.

(6) In relation to a Community infringement a consumer is a person who is a consumer for the purposes of—

(a) the Injunctions Directive, and

(b) the listed Directive **[**F185or the listed Regulation**]** concerned.

(7) A Directive is a listed Directive—

(a) if it is a Directive of the Council of the **[**F4European Union**]** or of the European Parliament and of the Council, and

(b) if it is specified in Schedule 13 or to the extent that any of its provisions is so specified.

[F186(7A) A Regulation is a listed Regulation—

(a) if it is a Regulation of the Council of the **[**F4European Union**]** or of the European Parliament and of the Council, and

(b) if it is specified in Schedule 13 or to the extent that any of its provisions is so specified.**]**

(8) A business includes—

(a) a professional practice;

(b) any other undertaking carried on for gain or reward;

(c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.

(9) The Secretary of State may by order modify Schedule 13.

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(10) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F4 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

F185 Words in s. 210(6)(b) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 4**

F186 S. 210(7A) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 5**

211 Domestic infringements

(1) In this Part a domestic infringement is an act or omission which—

(a) is done or made by a person in the course of a business,

(b) falls within subsection (2), and

(c) harms the collective interests of consumers in the United Kingdom.

(2) An act or omission falls within this subsection if it is of a description specified by the Secretary of State by order and consists of any of the following—

(a) a contravention of an enactment which imposes a duty, prohibition or restriction enforceable by criminal proceedings;

(b) an act done or omission made in breach of contract;

(c) an act done or omission made in breach of a non-contractual duty owed to a person by virtue of an enactment or rule of law and enforceable by civil proceedings;

(d) an act or omission in respect of which an enactment provides for a remedy or sanction enforceable by civil proceedings;

(e) an act done or omission made by a person supplying or seeking to supply goods or services as a result of which an agreement or security relating to the supply is void or unenforceable to any extent;

(f) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to exercise a right or remedy relating to the supply in circumstances where the exercise of the right or remedy is restricted or excluded under or by virtue of an enactment;

(g) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to avoid (to any extent) liability relating to the supply in circumstances where such avoidance is restricted or prevented under an enactment.

(3) But an order under this section may provide that any description of act or omission falling within subsection (2) is not a domestic infringement.

(4) For the purposes of subsection (2) it is immaterial—

(a) whether or not any duty, prohibition or restriction exists in relation to consumers as such;

(b) whether or not any remedy or sanction is provided for the benefit of consumers as such;

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(c) whether or not any proceedings have been brought in relation to the act or omission;

(d) whether or not any person has been convicted of an offence in respect of the contravention mentioned in subsection (2)(a);

(e) whether or not there is a waiver in respect of the breach of contract mentioned in subsection (2)(b).

(5) References to an enactment include references to subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

(6) The power to make an order under this section must be exercised by statutory instrument.

(7) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

212 Community infringements

(1) In this Part a Community infringement is an act or omission which harms the collective interests of consumers and which—

(a) contravenes a listed Directive as given effect by the laws, regulations or administrative provisions of an EEA State, [F187]. . .

(b) contravenes such laws, regulations or administrative provisions which provide additional permitted protections.

[[F188](c) contravenes a listed Regulation, or

(d) contravenes any laws, regulations or administrative provisions of an EEA State which give effect to a listed Regulation.**]**

(2) The laws, regulations or administrative provisions of an EEA State which give effect to a listed Directive provide additional permitted protections if—

(a) they provide protection for consumers which is in addition to the minimum protection required by the Directive concerned, and

(b) such additional protection is permitted by that Directive.

(3) The Secretary of State may by order specify for the purposes of this section the law in the United Kingdom which—

(a) gives effect to the listed Directives;

(b) provides additional permitted protections **[**[F189]; or**]**

[[F190](c) gives effect to a listed Regulation**]**

(4) References to a listed Directive **[**[F191]or to a listed Regulation**]** must be construed in accordance with section 210.

[[F192](5) EEA State has the meaning given by Schedule 1 to the Interpretation Act 1978 [F193].**]**

(6) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F187 Word in s. 212(1)(a) repealed (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 6**

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F188 S. 212(1)(c)(d) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 7**

F189 Words in s. 212(3)(b) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 8**

F190 S. 212(3)(c) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 8**

F191 Words in s. 212(4) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 9**

F192 S. 212(5) substituted (16.3.2007) by The Enterprise Act 2002 (EEA State) (Amendment) Regulations 2007 (S.I. 2007/528), **reg. 2**

F193 1978 c.30.

213 Enforcers

(1) Each of the following is a general enforcer—

(a) the OFT;

(b) every local weights and measures authority in Great Britain;

(c) the Department of Enterprise, Trade and Investment in Northern Ireland.

(2) A designated enforcer is any person or body (whether or not incorporated) which the Secretary of State—

(a) thinks has as one of its purposes the protection of the collective interests of consumers, and

(b) designates by order.

(3) The Secretary of State may designate a public body only if he is satisfied that it is independent.

(4) The Secretary of State may designate a person or body which is not a public body only if the person or body (as the case may be) satisfies such criteria as the Secretary of State specifies by order.

(5) A Community enforcer is a qualified entity for the purposes of the Injunctions Directive—

(a) which is for the time being specified in the list published in the Official Journal of the **[**F4European Union**]** in pursuance of Article 4.3 of that Directive, but

[F194(b) which is not a general enforcer, a designated enforcer or a CPC enforcer.**]**

[F195(5A) Each of the following (being bodies or persons designated by the Secretary of State under Article 4(1) or 4(2) of the CPC Regulation) is a CPC enforcer—

(a) the OFT;

(b) the Civil Aviation Authority;

(c) the **[**F196Financial Conduct Authority**]** ;

(d) the Secretary of State for Health;

(e) the Department of Health, Social Services and Public Safety in Northern Ireland;

(f) the Office of Communications;

(g) the Department of Enterprise, Trade and Investment in Northern Ireland;

(h) every local weights and measures authority in Great Britain;

(i) the Independent Committee for the Supervision of Standards of the Telephone Information Services.**]**

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[F197(j) the Information Commissioner**]**

(6) An order under this section may designate an enforcer in respect of—

(a) all infringements;

(b) infringements of such descriptions as are specified in the order.

(7) An order under this section may make different provision for different purposes.

(8) The designation of a body by virtue of subsection (3) is conclusive evidence for the purposes of any question arising under this Part that the body is a public body.

(9) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) If requested to do so by a designated enforcer which is designated in respect of one or more Community infringements the Secretary of State must notify the Commission of the **[**F4European Union**]** —

(a) of its name and purpose;

(b) of the Community infringements in respect of which it is designated.

(11) The Secretary of State must also notify the Commission—

(a) of the fact that a person or body in respect of which he has given notice under subsection (10) ceases to be a designated enforcer;

(b) of any change in the name or purpose of a designated enforcer in respect of which he has given such notice;

(c) of any change to the Community infringements in respect of which a designated enforcer is designated.

Textual Amendments

F4 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

F194 S. 213(5)(b) substituted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 10**

F195 S. 213(5A) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 11**

F196 Words in s. 213(5A)(c) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 95(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F197 S. 213(5A)(j) inserted (26.5.2011) by The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (S.I. 2011/1208), regs. 1(1), **16(a)**

Enforcement procedure

214 Consultation

[F198(1) An enforcer must not make an application for an enforcement order unless—

(a) the enforcer has engaged in appropriate consultation with the person against whom the enforcement order would be made, and

(b) if the enforcer is not the OFT, the enforcer has given notice to the OFT of the enforcer's intention to apply for the enforcement order, and the appropriate minimum period has elapsed.

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(1A) The appropriate minimum period is—

(a) in the case of an enforcement order, 14 days beginning with the day on which notice under subsection (1)(b) is given;

(b) in the case of an interim enforcement order, seven days beginning with the day on which notice under subsection (1)(b) is given.**]**

(2) Appropriate consultation is consultation for the purpose of—

(a) achieving the cessation of the infringement in a case where an infringement is occurring;

(b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred;

(c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a);

(d) ensuring that the infringement does not take place in the case of a Community infringement which the enforcer believes is likely to take place.

(3) Subsection (1) does not apply if the OFT thinks that an application for an enforcement order should be made without delay.

(4) **[**F199Subsection (1)(a)**]** ceases to apply—

(a) for the purposes of an application for an enforcement order at the end of the period of 14 days beginning with the day after the person against whom the enforcement order would be made receives a request for consultation from the enforcer;

(b) for the purposes of an application for an interim enforcement order at the end of the period of seven days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the enforcer.

(5) The Secretary of State may by order make rules in relation to consultation under this section.

(6) Such an order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section **[**F200(except subsections (1A) and (4))**]** and in sections 215 and 216 references to an enforcement order include references to an interim enforcement order.

Textual Amendments

F198 S. 214(1)(1A) substituted for s. 214(1) (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), **9(2)**

F199 Words in s. 214(4) substituted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), **9(3)**

F200 Words in s. 214(7) substituted (28.3.2013) by The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013/783), arts. 1(2), **9(4)**

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215 Applications

(1) An application for an enforcement order must name the person the enforcer thinks—

(a) has engaged or is engaging in conduct which constitutes a domestic or a Community infringement, or

(b) is likely to engage in conduct which constitutes a Community infringement.

(2) A general enforcer may make an application for an enforcement order in respect of any infringement.

(3) A designated enforcer may make an application for an enforcement order in respect of an infringement to which his designation relates.

(4) A Community enforcer may make an application for an enforcement order in respect of a Community infringement.

[F201(4A) A CPC enforcer may make an application for an enforcement order in respect of a Community infringement.**]**

(5) The following courts have jurisdiction to make an enforcement order—

(a) the High Court or a county court if the person against whom the order is sought carries on business or has a place of business in England and Wales or Northern Ireland;

(b) the Court of Session or the sheriff if the person against whom the order is sought carries on business or has a place of business in Scotland.

(6) If an application for an enforcement order is made by a Community enforcer the court may examine whether the purpose of the enforcer justifies its making the application.

(7) If the court thinks that the purpose of the Community enforcer does not justify its making the application the court may refuse the application on that ground alone.

(8) The purpose of a Community enforcer must be construed by reference to the Injunctions Directive.

(9) An enforcer which is not the OFT must notify the OFT of the result of an application under this section.

Textual Amendments

F201 S. 215(4A) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 12**

216 Applications: directions by OFT

(1) This section applies if the OFT believes that an enforcer other than the OFT intends to apply for an enforcement order.

(2) In such a case the OFT may direct that if an application in respect of a particular infringement is to be made it must be made—

(a) only by the OFT, or

(b) only by such other enforcer as the OFT directs.

(3) If the OFT directs that only it may make an application that does not prevent—

(a) the OFT or any enforcer from accepting an undertaking under section 219, or

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(b) the OFT from taking such other steps it thinks appropriate (apart from making an application) for the purpose of securing that the infringement is not committed, continued or repeated.

(4) The OFT may vary or withdraw a direction given under this section.

(5) The OFT must take such steps as it thinks appropriate to bring a direction (or a variation or withdrawal of a direction) to the attention of enforcers it thinks may be affected by it.

(6) But this section does not prevent an application for an enforcement order being made by a Community enforcer.

217 Enforcement orders

(1) This section applies if an application for an enforcement order is made under section 215 and the court finds that the person named in the application has engaged in conduct which constitutes the infringement.

(2) This section also applies if such an application is made in relation to a Community infringement and the court finds that the person named in the application is likely to engage in conduct which constitutes the infringement.

(3) If this section applies the court may make an enforcement order against the person.

(4) In considering whether to make an enforcement order the court must have regard to whether the person named in the application—

(a) has given an undertaking under section 219 in respect of conduct such as is mentioned in subsection (3) of that section;

(b) has failed to comply with the undertaking.

(5) An enforcement order must—

(a) indicate the nature of the conduct to which the finding under subsection (1) or (2) relates, and

(b) direct the person to comply with subsection (6).

(6) A person complies with this subsection if he—

(a) does not continue or repeat the conduct;

(b) does not engage in such conduct in the course of his business or another business;

(c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).

(7) But subsection (6)(a) does not apply in the case of a finding under subsection (2).

(8) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—

(a) the order;

(b) a corrective statement.

(9) If the court makes a finding under subsection (1) or (2) it may accept an undertaking by the person—

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(a) to comply with subsection (6), or

(b) to take steps which the court believes will secure that he complies with subsection (6).

(10) An undertaking under subsection (9) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—

(a) the terms of the undertaking;

(b) a corrective statement.

(11) If the court—

(a) makes a finding under subsection (1) or (2), and

(b) accepts an undertaking under subsection (9),

it must not make an enforcement order in respect of the infringement to which the undertaking relates.

(12) An enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

218 Interim enforcement order

(1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court—

(a) that it is alleged that the person is engaged in conduct which constitutes a domestic or Community infringement or is likely to engage in conduct which constitutes a Community infringement,

(b) that if the application had been an application for an enforcement order it would be likely to be granted,

(c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately, and

(d) if no notice of the application has been given to the person named in the application that it is appropriate to make an interim enforcement order without notice.

(2) An interim enforcement order must—

(a) indicate the nature of the alleged conduct, and

(b) direct the person to comply with subsection (3).

(3) A person complies with this subsection if he—

(a) does not continue or repeat the conduct;

(b) does not engage in such conduct in the course of his business or another business;

(c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).

(4) But subsection (3)(a) does not apply in so far as the application is made in respect of an allegation that the person is likely to engage in conduct which constitutes a Community infringement.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(5) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.

(6) An application for an interim enforcement order must refer to all matters—

(a) which are known to the applicant, and

(b) which are material to the question whether or not the application is granted.

(7) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.

(8) The court may vary or discharge an interim enforcement order on the application of—

(a) the enforcer who applied for the order;

(b) the person against whom it is made.

(9) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.

(10) If it appears to the court as mentioned in subsection (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application—

(a) to comply with subsection (3), or

(b) to take steps which the court believes will secure that he complies with subsection (3).

(11) An interim enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

[F202 218A Unfair commercial practices: substantiation of claims

(1) This section applies where an application for an enforcement order or for an interim enforcement order is made in respect of a Community infringement involving a contravention of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

(2) For the purposes of considering the application the court may require the person named in the application to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.

(3) If, having been required under subsection (2) to provide evidence as to the accuracy of a factual claim, a person—

(a) fails to provide such evidence, or

(b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,

the court may consider that the factual claim is inaccurate.

(4) In this section "commercial practice" has the meaning given by regulation 2 of the Consumer Protection from Unfair Trading Regulations 2008.]

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Textual Amendments

F202 S. 218A inserted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), regs. 1, **27** (with reg. 28(2)(3))

219 Undertakings

(1) This section applies if an enforcer has power to make an application under section 215.

(2) In such a case the enforcer may accept from a person to whom subsection (3) applies an undertaking that the person will comply with subsection (4).

(3) This subsection applies to a person who the enforcer believes—

(a) has engaged in conduct which constitutes an infringement;

(b) is engaging in such conduct;

(c) is likely to engage in conduct which constitutes a Community infringement.

(4) A person complies with this subsection if he—

(a) does not continue or repeat the conduct;

(b) does not engage in such conduct in the course of his business or another business;

(c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).

(5) But subsection (4)(a) does not apply in the case of an undertaking given by a person in so far as subsection (3) applies to him by virtue of paragraph (c).

[F203(5A) A CPC enforcer who has accepted an undertaking under this section may—

(a) accept a further undertaking from the person concerned to publish the terms of the undertaking; or

(b) take steps itself to publish the undertaking.

(5B) In each case the undertaking shall be published in such form and manner and to such extent as the CPC enforcer thinks appropriate for the purpose of eliminating any continuing effects of the Community infringement.**]**

(6) If an enforcer accepts an undertaking under this section it must notify the OFT—

(a) of the terms of the undertaking;

(b) of the identity of the person who gave it.

Textual Amendments

F203 S. 219(5A)(5B) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 13**

220 Further proceedings

(1) This section applies if the court—

(a) makes an enforcement order under section 217,

(b) makes an interim enforcement order under section 218, or

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(c) accepts an undertaking under either of those sections.

(2) In such a case the OFT has the same right to apply to the court in respect of a failure to comply with the order or undertaking as the enforcer who made the application for the order.

(3) An application to the court in respect of a failure to comply with an undertaking may include an application for an enforcement order or for an interim enforcement order.

(4) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order (instead of making any other order it has power to make).

(5) In the case of an application for an enforcement order or for an interim enforcement order as mentioned in subsection (3) sections 214 and 216 must be ignored and sections 215 and 217 or 218 (as the case may be) apply subject to the following modifications—

(a) section 215(1)(b) must be ignored;

(b) section 215(5) must be ignored and the application must be made to the court which accepted the undertaking;

(c) section 217(9) to (11) must be ignored;

(d) section 218(10) must be ignored.

(6) If an enforcer which is not the OFT makes an application in respect of the failure of a person to comply with an enforcement order, an interim enforcement order or an undertaking given under section 217 or 218 the enforcer must notify the OFT—

(a) of the application;

(b) of any order made by the court on the application.

221 Community infringements: proceedings

(1) Subsection (2) applies to—

(a) every general enforcer;

(b) every designated enforcer which is a public body.

(2) An enforcer to which this subsection applies has power to take proceedings in EEA States other than the United Kingdom for the cessation or prohibition of a Community infringement.

(3) Subsection (4) applies to—

(a) every general enforcer;

(b) every designated enforcer.

[[F204](c) every CPC enforcer.**]**

(4) An enforcer to which this subsection applies may co-operate with a Community enforcer—

(a) for the purpose of bringing proceedings mentioned in subsection (2);

(b) in connection with the exercise by the Community enforcer of its functions under this Part.

(5) An EEA State is a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Textual Amendments

F204 S. 221(3)(c) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 14**

222 Bodies corporate: accessories

(1) This section applies if the person whose conduct constitutes a domestic infringement or a Community infringement is a body corporate.

(2) If the conduct takes place with the consent or connivance of a person (an accessory) who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.

(3) A person has a special relationship with a body corporate if he is—

(a) a controller of the body corporate, or

(b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.

(4) A person is a controller of a body corporate if—

(a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions, or

(b) either alone or with an associate or associates he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

(5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.

(6) The court may accept an undertaking under section 217(9) or 218(10) from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.

(7) An enforcer may accept an undertaking under section 219 from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.

(8) Subsection (9) applies if—

(a) an order is made as mentioned in subsection (5), or

(b) an undertaking is accepted as mentioned in subsection (6) or (7).

(9) In such a case for subsection (6) of section 217, subsection (3) of section 218 or subsection (4) of section 219 (as the case may be) there is substituted the following subsection—

"(0) A person complies with this subsection if he—

(a) does not continue or repeat the conduct;

(b) does not in the course of any business carried on by him engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in section 222(1);

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(c) does not consent to or connive in the carrying out of such conduct by another body corporate with which he has a special relationship (within the meaning of section 222(3)).”

(10) A person is an associate of an individual if—

(a) he is the spouse **[**F205or civil partner**]** of the individual;

(b) he is a relative of the individual;

(c) he is a relative of the individual’s spouse **[**F205or civil partner**]**;

(d) he is the spouse **[**F205or civil partner**]** of a relative of the individual;

(e) he is the spouse **[**F205or civil partner**]** of a relative of the individual’s spouse **[**F205or civil partner**]** ;

(f) he lives in the same household as the individual otherwise than merely because he or the individual is the other’s employer, tenant, lodger or boarder;

(g) he is a relative of a person who is an associate of the individual by virtue of paragraph (f);

(h) he has at some time in the past fallen within any of paragraphs (a) to (g).

(11) A person is also an associate of—

(a) an individual with whom he is in partnership;

(b) an individual who is an associate of the individual mentioned in paragraph (a);

(c) a body corporate if he is a controller of it or he is an associate of a person who is a controller of the body corporate.

(12) A body corporate is an associate of another body corporate if—

(a) the same person is a controller of both;

(b) a person is a controller of one and persons who are his associates are controllers of the other;

(c) a person is a controller of one and he and persons who are his associates are controllers of the other;

(d) a group of two or more persons is a controller of each company and the groups consist of the same persons;

(e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

Textual Amendments

F205 Words in s. 222(10)(a)(c)(d)(e) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 169**; S.I. 2005/3175, **art. 2**, Sch. 1

223 Bodies corporate: orders

(1) This section applies if a court makes an enforcement order or an interim enforcement order against a body corporate and—

(a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,

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(b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or

(c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.

(2) The court may direct that the order is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.

(3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(4) Any two bodies corporate are interconnected—

(a) if one of them is a subsidiary of the other, or

(b) if both of them are subsidiaries of the same body corporate.

[[F206](5) In this section "subsidiary" has the meaning given by section 1159 of the Companies Act 2006.**]**

Textual Amendments

F206 S. 223(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 199(4)** (with art. 10)

Information

224 OFT

(1) The OFT may for any of the purposes mentioned in subsection (2) give notice to any person requiring the person to provide it with the information specified in the notice.

(2) The purposes are—

(a) to enable the OFT to exercise or to consider whether to exercise any function it has under this Part;

(b) to enable a designated enforcer to which section 225 does not apply to consider whether to exercise any function it has under this Part;

(c) to enable a Community enforcer to consider whether to exercise any function it has under this Part;

(d) to ascertain whether a person has complied with or is complying with an enforcement order, an interim enforcement order or an undertaking given under section 217(9), 218(10) or 219.

225 Other enforcers

(1) This section applies to—

(a) every general enforcer (other than the OFT);

(b) every designated enforcer which is a public body.

[[F207](c) every CPC enforcer (other than the OFT).**]**

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
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(2) An enforcer to which this section applies may for any of the purposes mentioned in subsection (3) give notice to any person requiring the person to provide the enforcer with the information specified in the notice.

(3) The purposes are—

(a) to enable the enforcer to exercise or to consider whether to exercise any function it has under this Part;

(b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of the enforcer or an undertaking given under section 217(9) or 218(10) (as the case may be) following such an application or an undertaking given to the enforcer under section 219.

Textual Amendments

F207 S. 225(1)(c) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 15**

226 Notices: procedure

(1) This section applies to a notice given under section 224 or 225.

(2) The notice must—

(a) be in writing;

(b) specify the purpose for which the information is required.

(3) If the purpose is as mentioned in section 224(2)(a), (b) or (c) or 225(3)(a) the notice must specify the function concerned.

(4) A notice may specify the time within which and manner in which it is to be complied with.

(5) A notice may require the production of documents or any description of documents.

(6) An enforcer may take copies of any documents produced in compliance with such a requirement.

[[F208](6A) A notice may specify the form in which information is to be provided.**]**

(7) A notice may be varied or revoked by a subsequent notice.

(8) But a notice must not require a person to provide any information or produce any document which he would be entitled to refuse to provide or produce—

(a) in proceedings in the High Court on the grounds of legal professional privilege;

(b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

Textual Amendments

F208 S. 226(6A) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 16**

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

227 Notices: enforcement

(1) If a person fails to comply with a notice given under section 224 or 225 the enforcer who gave the notice may make an application under this section.

(2) If it appears to the court that the person to whom the notice was given has failed to comply with the notice the court may make an order under this section.

(3) An order under this section may require the person to whom the notice was given to do anything the court thinks it is reasonable for him to do for any of the purposes mentioned in section 224 or 225 (as the case may be) to ensure that the notice is complied with.

(4) An order under this section may require the person to meet all the costs or expenses of the application.

(5) If the person is a company or association the court in proceeding under subsection (4) may require any officer of the company or association who is responsible for the failure to meet the costs or expenses.

(6) The court is a court which may make an enforcement order.

(7) In subsection (5) an officer of a company is a person who is a director, manager, secretary or other similar officer of the company.

[F209 227A Power to enter premises without warrant

(1) An officer of a CPC enforcer who reasonably suspects that there has been, or is likely to be, a Community infringement may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether there has been, or is likely to be, such an infringement.

(2) An officer of a CPC enforcer who reasonably suspects that there is, or has been, a failure to comply with a relevant enforcement measure may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether a person is complying with, or has complied with, the relevant enforcement measure.

(3) An appropriate notice must be given to the occupier of the premises before an officer of a CPC enforcer enters them under subsection (1) and (2).

(4) An appropriate notice is a notice in writing given by an officer of a CPC enforcer which—

(a) gives at least two working days' notice of entry on the premises;

(b) sets out why the entry is necessary; and

(c) indicates the nature of the offence created by section 227E.

(5) Subsection (3) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so.

(6) In that case, the officer entering the premises must produce to any occupier that he finds on the premises a document setting out why the entry is necessary and indicating the nature of the offence created by section 227E.

(7) In all cases, the officer entering the premises must produce to any occupier evidence of—

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(a) his identity; and

(b) in the case of an authorised officer of a CPC enforcer, his authorisation;

if asked to do so.

(8) In this section—

"give", in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post; and

"working day" means a day which is not—

(a) Saturday or Sunday; or

(b) Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 [M1] in the part of the United Kingdom in which the premises are situated.

(9) In this section and sections 227B to 227F—

"authorised officer of a CPC enforcer" means an officer of a CPC enforcer who is authorised by that enforcer for the purposes of this Part;

"occupier" means any person whom the officer concerned reasonably suspects to be the occupier;

"officer of a CPC enforcer" means—

(a) an officer of a local weights and measures authority in Great Britain; or

(b) an authorised officer of a CPC enforcer which is not a local weights and measures authority in Great Britain;

"premises" includes vehicles but does not include any premises which are used only as a dwelling; and

"relevant enforcement measure" means—

(a) an enforcement order made under section 217 on the application of the CPC enforcer;

(b) an interim enforcement order made under section 218 on the application of the CPC enforcer;

(c) an undertaking under section 217(9) in connection with an application made by the CPC enforcer for an enforcement order under section 217;

(d) an undertaking under section 218(10) in connection with an application made by the CPC enforcer for an interim enforcement order under section 218; or

(e) an undertaking under section 219 to the CPC enforcer.

Textual Amendments

F209 Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 17**

Marginal Citations

M1 1971 c.80.

227B Powers exercisable on the premises

(1) An officer of a CPC enforcer may, in the exercise of his powers under section 227A—

(a) observe the carrying on of a business on the premises;

(b) inspect goods or documents on the premises;

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(c) require any person on the premises to produce goods or documents within such period as the officer considers to be reasonable;

(d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere; or

(e) seize, remove and retain goods or documents which he reasonably suspects may be required as evidence of a Community infringement or a breach of a relevant enforcement measure.

(2) The power in subsection (1)(c) to require a person to produce goods or documents includes the power to require him—

(a) to state, to the best of his knowledge and belief, where the goods or documents are;

(b) to give an explanation of the goods or documents; and

(c) to secure that any goods or documents produced are authenticated or verified in such manner as the officer considers appropriate.

(3) An officer of a CPC enforcer may take copies of, or extracts from, any documents to which he has access by virtue of subsection (1).

(4) But nothing in this section authorises action to be taken in relation to anything which, in proceedings in the High Court, a person would be entitled to refuse to produce on the grounds of legal professional privilege.

(5) In this section document includes information recorded in any form.

(6) The reference in subsection (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(7) In its application to Scotland, this section has effect as if the reference in subsection (4) —

(a) to proceedings in the High Court were a reference to proceedings in the Court of Session; and

(b) to an entitlement on the grounds of legal professional privilege were a reference to an entitlement on the grounds of confidentiality of communications.

Textual Amendments

F209 Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 17**

227C Power to enter premises with warrant

(1) A justice of the peace may issue a warrant authorising an officer of a CPC enforcer to enter premises for purposes falling within section 227A(1) or (2) if the justice of the peace considers that there are reasonable grounds for believing that —

(a) condition A is met; and

(b) either condition B, C or D is met.

(2) Condition A is that there are, on the premises, goods or documents to which an officer of a CPC enforcer would be entitled to have access under sections 227A and 227B.

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(3) Condition B is that an officer of a CPC enforcer acting under sections 227A and 227B has been, or would be likely to be, refused admission to the premises or access to the goods or documents.

(4) Condition C is that the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under section 227A.

(5) Condition D is that there is likely to be nobody at the premises capable of granting admission.

(6) A warrant under this section authorises the officer of the CPC enforcer—

(a) to enter the premises specified in the warrant (using reasonable force if necessary);

(b) to do anything on the premises that an officer of the CPC enforcer would be able to do if he had entered the premises under section 227A;

(c) to search for goods or documents which he has required a person on the premises to produce where that person has failed to comply with such a requirement;

(d) to the extent that it is reasonably necessary to do so, to require any person to whom subsection (7) applies to break open a container and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to do so himself;

(e) to take any other steps which he considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which he would be entitled to have access under sections 227A and 227B.

(7) This subsection applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.

(8) A warrant under this section—

(a) is issued on information on oath given by an officer of a CPC enforcer;

(b) ceases to have effect at the end of the period of one month beginning with the day of issue; and

(c) must, on request, be produced to the occupier of the premises for inspection.

(9) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.

(10) In its application to Scotland, this section has effect as if—

(a) the references in subsection (1) to a justice of the peace included references to a sheriff; and

(b) the reference in subsection (8) to information on oath were a reference to evidence on oath.

(11) In its application to Northern Ireland, this section has effect as if the references in subsection (1) to a justice of the peace were references to a lay magistrate.

Textual Amendments

F209 Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 17**

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227D Ancillary provisions about powers of entry

(1) An officer of a CPC enforcer who enters premises by virtue of section 227A may only do so at a reasonable time.

(2) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C may take with him such persons and equipment as he considers appropriate.

(3) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C must, if the premises are unoccupied or the occupier is temporarily absent, take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered.

Textual Amendments

F209 Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 17**

227E Obstructing, or failing to co-operate with, powers of entry

(1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with, an officer of a CPC enforcer who is exercising or seeking to exercise a power under sections 227A to 227D.

(2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Textual Amendments

F209 Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 17**

227F Retention of documents and goods

(1) No documents seized under sections 227A to 227D may be retained for a period of more than three months.

(2) No goods seized under sections 227A to 227D may be retained for a period of more than three months unless they are reasonably required in connection with the exercise of any function of a CPC enforcer under this Part.

(3) Where goods are so required they may be retained for as long as they are so required.]

Textual Amendments

F209 Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 17**

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

Miscellaneous

228 Evidence

(1) Proceedings under this Part are civil proceedings for the purposes of—

(a) section 11 of the Civil Evidence Act 1968 (c. 64) (convictions admissible as evidence in civil proceedings);

(b) section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) (corresponding provision in Scotland);

(c) section 7 of the Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.)) (corresponding provision in Northern Ireland).

(2) In proceedings under this Part any finding by a court in civil proceedings that an act or omission mentioned in section 211(2)(b), (c) or (d) or 212(1) has occurred—

(a) is admissible as evidence that the act or omission occurred;

(b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.

(3) But subsection (2) does not apply to any finding—

(a) which has been reversed on appeal;

(b) which has been varied on appeal so as to negative it.

[F210(4) This section does not apply to proceedings for an offence under section 227E.**]**

Textual Amendments

F210 S. 228(4) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 18**

229 Advice and information

(1) As soon as is reasonably practicable after the passing of this Act the OFT must prepare and publish advice and information with a view to—

(a) explaining the provisions of this Part to persons who are likely to be affected by them, and

(b) indicating how the OFT expects such provisions to operate.

(2) The OFT may at any time publish revised or new advice or information.

(3) Advice or information published in pursuance of subsection (1)(b) may include advice or information about the factors which the OFT may take into account in considering how to exercise the functions conferred on it by this Part.

(4) Advice or information published by the OFT under this section is to be published in such form and in such manner as it considers appropriate.

(5) In preparing advice or information under this section the OFT must consult such persons as it thinks are representative of persons affected by this Part.

(6) If any proposed advice or information relates to a matter in respect of which another general **[**F211or CPC**]** enforcer or a designated enforcer may act the persons to be consulted must include that enforcer.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F211 Words in s. 229(6) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 19**

230 Notice to OFT of intended prosecution

(1) This section applies if a local weights and measures authority in England and Wales intends to start proceedings for an offence under an enactment or subordinate legislation specified by the Secretary of State by order for the purposes of this section.

(2) The authority must give the OFT—

(a) notice of its intention to start the proceedings;

(b) a summary of the evidence it intends to lead in respect of the charges.

(3) The authority must not start the proceedings until whichever is the earlier of the following—

(a) the end of the period of 14 days starting with the day on which the authority gives the notice;

(b) the day on which it is notified by the OFT that the OFT has received the notice and summary given under subsection (2).

(4) The authority must also notify the OFT of the outcome of the proceedings after they are finally determined.

(5) But such proceedings are not invalid by reason only of the failure of the authority to comply with this section.

(6) Subordinate legislation has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30).

(7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C355 S. 230 continued (23.2.2011) by The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (S.I. 2010/2960), reg. 1(2), **Sch. 7 para. 2**

231 Notice of convictions and judgments to OFT

(1) This section applies if—

(a) a person is convicted of an offence by or before a court in the United Kingdom, or

(b) a judgment is given against a person by a court in civil proceedings in the United Kingdom.

(2) The court may make arrangements to bring the conviction or judgment to the attention of the OFT if it appears to the court—

(a) having regard to the functions of the OFT under this Part or under the Estate Agents Act 1979 (c. 38) that it is expedient for the conviction or judgment to be brought to the attention of the OFT, and

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(b) without such arrangements the conviction or judgment may not be brought to the attention of the OFT.

(3) For the purposes of subsection (2) it is immaterial that the proceedings have been finally disposed of by the court.

(4) Judgment includes an order or decree and references to the giving of the judgment must be construed accordingly.

Interpretation

232 Goods and services

(1) References in this Part to goods and services must be construed in accordance with this section.

(2) Goods include—
(a) buildings and other structures;
(b) ships, aircraft and hovercraft.

(3) The supply of goods includes—
(a) supply by way of sale, lease, hire or hire purchase;
(b) in relation to buildings and other structures, construction of them by one person for another.

(4) Goods or services which are supplied wholly or partly outside the United Kingdom must be taken to be supplied to or for a person in the United Kingdom if they are supplied in accordance with arrangements falling within subsection (5).

(5) Arrangements fall within this subsection if they are made by any means and—
(a) at the time the arrangements are made the person seeking the supply is in the United Kingdom, or
(b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the United Kingdom.

233 Person supplying goods

(1) This section has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under—
(a) a hire-purchase agreement;
(b) a credit-sale agreement;
(c) a conditional sale agreement.

(2) The references include references to a person who conducts any antecedent negotiations relating to the agreement.

(3) The following expressions must be construed in accordance with section 189 of the Consumer Credit Act 1974 (c. 39) —
(a) hire-purchase agreement;
(b) credit-sale agreement;

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(c) conditional sale agreement;
(d) antecedent negotiations.

234 Supply of services

(1) References in this Part to the supply of services must be construed in accordance with this section.

(2) The supply of services does not include the provision of services under 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.

(3) The supply of services includes—
(a) performing for gain or reward any activity other than the supply of goods;
(b) rendering services to order;
(c) the provision of services by making them available to potential users.

(4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

(5) The supply of services includes making arrangements by means of a relevant agreement (within the meaning of **[**F212paragraph 29 of Schedule 2 to the Telecommunications Act 1984**]**) for sharing the use of telecommunications apparatus.

(6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State specifies by order.

(7) The power to make an order under subsection (6) must be exercised by statutory instrument.

(8) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F212 Words in s. 234(5) substituted (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(6)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

235 Injunctions Directive

In this Part the Injunctions Directive is Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests.

[F213**235A** CPC Regulation

In this Part—
(a) the CPC Regulation is Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as amended by the Unfair Commercial Practices Directive [M2];

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(b) the Unfair Commercial Practices Directive is Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [M3].

Textual Amendments

F213 Ss. 235A, 235B inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 20**

Marginal Citations

M2 OJ No. L364, 9.12.2004.

M3 OJ No. L149/22, 11.6.2005.

235B Dual enforcers

References in this Part to a general enforcer, a designated enforcer or a CPC enforcer are to be read, in the case of a person or body which is more than one kind of enforcer, as references to that person or body acting in its capacity as a general enforcer, designated enforcer or (as the case may be) CPC enforcer.**]**

Textual Amendments

F213 Ss. 235A, 235B inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 20**

Crown

[F214 236 Crown

(1) This Part binds the Crown.

(2) But the powers conferred by sections 227A to 227D are not exercisable in relation to premises occupied by the Crown.**]**

Textual Amendments

F214 S. 236 substituted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 21**

PART 9

INFORMATION

Modifications etc. (not altering text)

C356 Pt. 9 modified (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **s. 29(3)-(7)**, 66(2) (with s. 6(9)); S.I. 2008/2550, art. 2, Sch.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

C357 Pt. 9 restricted (2.3.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(a), **119(3)** (with reg. 3)

C358 Pt. 9 applied (1.5.2009 for specified purposes, 1.11.2009 in so far as not already in force) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(b)(c), **107** (with reg. 3)

C359 Pt. 9 applied (N.I.) (1.4.2003) by The Energy (Northern Ireland) Order 2003 (S.I. 2003/419) (N.I. 6), **art. 63**; S.R. 2003/203, **art. 2**, Sch.
Pt. 9 applied (20.6.2003) by S.I. 1990/1715, reg. 5 (as inserted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 17(5)**)

C360 Pt. 9 (ss. 237-247) modified (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 29(3)-(7)**, 66 (with s. 6(9))

Restrictions on disclosure

237 General restriction

(1) This section applies to specified information which relates to—

(a) the affairs of an individual;

(b) any business of an undertaking.

(2) Such information must not be disclosed—

(a) during the lifetime of the individual, or

(b) while the undertaking continues in existence,

unless the disclosure is permitted under this Part.

(3) But subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene—

(a) that subsection;

(b) any other enactment or rule of law prohibiting or restricting the disclosure of the information.

(4) Nothing in this Part authorises a disclosure of information which contravenes the Data Protection Act 1998 (c. 29).

(5) Nothing in this Part affects the Competition Appeal Tribunal.

(6) This Part (except section 244) does not affect any power or duty to disclose information which exists apart from this Part.

Modifications etc. (not altering text)

C361 S. 237 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), **ss. 115**, 120; S.I. 2003/2681, **art. 2(b)**

238 Information

(1) Information is specified information if it comes to a public authority in connection with the exercise of any function it has under or by virtue of—

(a) Part 1, 3, 4, 6, 7 or 8;

(b) an enactment specified in Schedule 14;

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(c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.

(2) It is immaterial whether information comes to a public authority before or after the passing of this Act.

(3) Public authority (except in the expression "overseas public authority") must be construed in accordance with section 6 of the Human Rights Act 1998 (c. 42).

(4) In subsection (1) the reference to an enactment includes a reference to an enactment contained in—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation;

(c) subordinate legislation.

(5) The Secretary of State may by order amend Schedule 14.

(6) The power to make an order under subsection (5) includes power to add, vary or remove a reference to any provision of—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation.

(7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(8) This section applies for the purposes of this Part.

Permitted disclosure

239 Consent

(1) This Part does not prohibit the disclosure by a public authority of information held by it to any other person if it obtains each required consent.

(2) If the information was obtained by the authority from a person who had the information lawfully and the authority knows the identity of that person the consent of that person is required.

(3) If the information relates to the affairs of an individual the consent of the individual is required.

(4) If the information relates to the business of an undertaking the consent of the person for the time being carrying on the business is required.

(5) For the purposes of subsection (4) consent may be given—

(a) in the case of a company by a director, secretary or other officer of the company;

(b) in the case of a partnership by a partner;

(c) in the case of an unincorporated body or association by a person concerned in the management or control of the body or association.

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240 [F20EU] obligations

This Part does not prohibit the disclosure of information held by a public authority to another person if the disclosure is required for the purpose of a **[**F20EU**]** obligation.

Textual Amendments

F20 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

241 Statutory functions

(1) A public authority which holds information to which section 237 applies may disclose that information for the purpose of facilitating the exercise by the authority of any function it has under or by virtue of this Act or any other enactment.

(2) If information is disclosed under subsection (1) so that it is not made available to the public it must not be further disclosed by a person to whom it is so disclosed other than with the agreement of the public authority for the purpose mentioned in that subsection.

(3) A public authority which holds information to which section 237 applies may disclose that information to any other person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of—

(a) this Act;

(b) an enactment specified in Schedule 15;

(c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.

(4) Information disclosed under subsection (3) must not be used by the person to whom it is disclosed for any purpose other than a purpose relating to a function mentioned in that subsection.

(5) In subsection (1) the reference to an enactment includes a reference to an enactment contained in—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation;

(c) subordinate legislation.

(6) The Secretary of State may by order amend Schedule 15.

(7) The power to make an order under subsection (6) includes power to add, vary or remove a reference to any provision of—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation.

(8) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[F215241A Civil proceedings

(1) A public authority which holds prescribed information to which section 237 applies may disclose that information to any person—

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(a) for the purposes of, or in connection with, prescribed civil proceedings (including prospective proceedings) in the United Kingdom or elsewhere, or

(b) for the purposes of obtaining legal advice in relation to such proceedings, or

(c) otherwise for the purposes of establishing, enforcing or defending legal rights that are or may be the subject of such proceedings.

(2) Subsection (1) does not apply to—

(a) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980;

F216(b) . . . . . .

(c) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act;

(d) information which comes to a public authority in connection with an investigation under the Competition Act 1998 (c. 41).

(3) In subsection (1) "prescribed" means prescribed by order of the Secretary of State.

(4) An order under this section—

(a) may prescribe information, or civil proceedings, for the purposes of this section by reference to such factors as appear to the Secretary of State to be appropriate;

(b) may prescribe for the purposes of this section all information, or civil proceedings, or all information or civil proceedings not falling within one or more specified exceptions;

(c) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than those specified in subsection (1).**]**

Textual Amendments

F215 S. 241A inserted (6.4.2007) by Companies Act 2006 (c. 46), **ss. 1281**, 1300; S.I. 2006/3428, **art. 4(1)(f)** (subject to arts. 5, 6-8, Schs. 1, 5)

F216 S. 241A(2)(b) repealed (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 19** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

242 Criminal proceedings

(1) A public authority which holds information to which section 237 applies may disclose that information to any person—

(a) in connection with the investigation of any criminal offence in any part of the United Kingdom;

(b) for the purposes of any criminal proceedings there;

(c) for the purpose of any decision whether to start or bring to an end such an investigation or proceedings.

(2) Information disclosed under this section must not be used by the person to whom it is disclosed for any purpose other than that for which it is disclosed.

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(3) A public authority must not make a disclosure under this section unless it is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

243 Overseas disclosures

(1) A public authority which holds information to which section 237 applies (the discloser) may disclose that information to an overseas public authority for the purpose mentioned in subsection (2).

(2) The purpose is facilitating the exercise by the overseas public authority of any function which it has relating to—

(a) carrying out investigations in connection with the enforcement of any relevant legislation by means of civil proceedings;

(b) bringing civil proceedings for the enforcement of such legislation or the conduct of such proceedings;

(c) the investigation of crime;

(d) bringing criminal proceedings or the conduct of such proceedings;

(e) deciding whether to start or bring to an end such investigations or proceedings.

(3) But subsection (1) does not apply to any of the following—

(a) information which is held by a person who is designated by virtue of section 213(4) as a designated enforcer for the purposes of Part 8;

(b) information which comes to a public authority in connection with an investigation under Part 4, 5 or 6 of the 1973 Act or under section 11 of the Competition Act 1980 (c. 21);

F217(c) . . . . . .

(d) information which comes to a public authority in connection with an investigation under Part 3 or 4 or section 174 of this Act.

(4) The Secretary of State may direct that a disclosure permitted by this section must not be made if he thinks that in connection with any matter in respect of which the disclosure could be made it is more appropriate—

(a) if any investigation is to be carried out, that it is carried out by an authority in the United Kingdom or in another specified country or territory;

(b) if any proceedings are to be brought, that they are brought in a court in the United Kingdom or in another specified country or territory.

(5) The Secretary of State must take such steps as he thinks are appropriate to bring a direction under subsection (4) to the attention of persons likely to be affected by it.

(6) In deciding whether to disclose information under this section a public authority must have regard in particular to the following considerations—

(a) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure;

(b) whether the law of the country or territory to whose authority the disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings;

(c) whether the law of that country or territory provides appropriate protection in relation to the storage and disclosure of personal data;

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(d) whether there are arrangements in place for the provision of mutual assistance as between the United Kingdom and that country or territory in relation to the disclosure of information of the kind to which section 237 applies.

(7) Protection is appropriate if it provides protection in relation to the matter in question which corresponds to that so provided in any part of the United Kingdom.

(8) The Secretary of State may by order—

(a) modify the list of considerations in subsection (6);

(b) add to those considerations;

(c) remove any of those considerations.

(9) An order under subsection (8) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) Information disclosed under this section—

(a) may be disclosed subject to the condition that it must not be further disclosed without the agreement of the discloser, and

(b) must not otherwise be used by the overseas public authority to which it is disclosed for any purpose other than that for which it is first disclosed.

(11) An overseas public authority is a person or body in any country or territory outside the United Kingdom which appears to the discloser to exercise functions of a public nature in relation to any of the matters mentioned in paragraphs (a) to (e) of subsection (2).

(12) Relevant legislation is—

(a) this Act, any enactment specified in Schedule 14 and such subordinate legislation as is specified by order for the purposes of section 238(1);

(b) any enactment or subordinate legislation specified in an order under section 211(2);

(c) any enactment or subordinate legislation specified in an order under section 212(3);

(d) legislation in any country or territory outside the United Kingdom which appears to the discloser to make provision corresponding to this Act or to any such enactment or subordinate legislation.

Textual Amendments

F217 S. 243(3)(c) repealed (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 19** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C362 S. 243(1) excluded (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 3**

C363 S. 243(6) applied (with modifications) (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 59(6)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3

244 Specified information: considerations relevant to disclosure

(1) A public authority must have regard to the following considerations before disclosing any specified information (within the meaning of section 238(1)).

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

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

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

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

(4) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3)(a) or (b) is necessary for the purpose for which the authority is permitted to make the disclosure.

Offences

245 Offences

(1) A person commits an offence if he discloses information to which section 237 applies in contravention of section 237(2).

(2) A person commits an offence if he discloses information in contravention of a direction given under section 243(4).

(3) A person commits an offence if he uses information disclosed to him under this Part for a purpose which is not permitted under this Part.

(4) A person who commits an offence under this section is liable—

(a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

General

246 Subordinate legislation

In this Part "subordinate legislation" has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30) and includes an instrument made under—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation.

247 Repeals

The following enactments (which make provision as to the disclosure of certain information) shall cease to have effect—

(a) section 28(5) and (5A) of the Trade Descriptions Act 1968 (c. 29);

(b) sections 30(3) and 133 of the 1973 Act;

(c) paragraph 12 of the Schedule to the Prices Act 1974 (c. 24);

(d) section 174 of the Consumer Credit Act 1974 (c. 39);

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(e) section 10 of the Estate Agents Act 1979 (c. 38);
(f) section 19(1) to (3), (4)(c), (d) and (f) and (5) and (6) of the Competition Act 1980 (c. 21);
(g) section 38 of the Consumer Protection Act 1987 (c. 43);
(h) paragraph 7 of the Schedule to the Property Misdescriptions Act 1991 (c. 29);
(i) paragraph 5 of Schedule 2 to the Timeshare Act 1992 (c. 35);
(j) sections 55 and 56 of and Schedule 11 to the Competition Act 1998 (c. 41);
(k) section 351(1) to (3) and (7) of and Schedule 19 to the Financial Services and Markets Act 2000 (c. 8).

PART 10

INSOLVENCY

Companies etc.

248 Replacement of Part II of Insolvency Act 1986

(1) The following shall be substituted for Part II of the Insolvency Act 1986 (c. 45) (administration orders)—

"PART II

ADMINISTRATION

8 **Administration**

Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect."

(2) The Schedule B1 set out in Schedule 16 to this Act shall be inserted after Schedule A1 to the Insolvency Act 1986.

(3) Schedule 17 (minor and consequential amendments relating to administration) shall have effect.

(4) The Secretary of State may by order amend an enactment in consequence of this section.

(5) An order under subsection (4)—
(a) must be made by statutory instrument, and
(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)
C364 S. 248: power to modify extended (5.10.2004) by Energy Act 2004 (c. 20), **ss. 170(2)(a)**, 198(2); S.I. 2004/2575, **art. 2(1)**, Sch. 1
C365 S. 248 modified (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 84(a)**, 93(2)(3); S.I. 2011/2329, art. 3

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C366 S. 248 power to modify extended (18.12.2011) by Energy Act 2011 (c. 16), **ss. 100(2)(a)**, 121(3)

249 Special administration regimes

(1) Section 248 shall have no effect in relation to—

(a) **[**F218a company holding an appointment under Chapter I of Part II of the Water Industry Act 1991 (c. 56) (water and sewerage undertakers),**]**

[F219(aa) **[**F218a qualifying licensed water supplier within the meaning of subsection (6) of section 23 of the Water Industry Act 1991 (meaning and effect of special administration order),**]]**

(b) a protected railway company within the meaning of section 59 of the Railways Act 1993 (c. 43) (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996 (c. 61) (administration)),

(c) a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services),

(d) a public-private partnership company within the meaning of section 210 of the Greater London Authority Act 1999 (c. 29) (public-private partnership agreement), or

(e) a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).

(2) A reference in an Act listed in subsection (1) to a provision of Part II of the Insolvency Act 1986 (or to a provision which has effect in relation to a provision of that Part of that Act) shall, in so far as it relates to a company or society listed in subsection (1), continue to have effect as if it referred to Part II as it had effect immediately before the coming into force of section 248.

(3) But the effect of subsection (2) in respect of a particular class of company or society may be modified by order of—

(a) the Treasury, in the case of building societies, or

(b) the Secretary of State, in any other case.

(4) An order under subsection (3) may make consequential amendment of an enactment.

(5) An order under subsection (3)—

(a) must be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(6) An amendment of the Insolvency Act 1986 (c. 45) made by this Act is without prejudice to any power conferred by Part VII of the Companies Act 1989 (c. 40) (financial markets) to modify the law of insolvency.

Textual Amendments

F218 S. 249(1)(a)(aa) ceases to have effect (E.W.) (1.10.2010 for specified purposes) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 6(3)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.

F219 S. 249(1)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(3)**; S.I. 2005/2714, **art. 3(c)**

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Modifications etc. (not altering text)

C367 S. 249 extended (16.10.2005) by Railways Act 2005 (c. 14), **ss. 49(11)**, 60; S.I. 2005/2812, **art. 2(1)**, Sch. 1

250 Prohibition of appointment of administrative receiver

(1) The following shall be inserted after Chapter III of Part III of the Insolvency Act 1986 (receivership: receivers' powers)—

"**CHAPTER IV**

PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER

72A Floating charge holder not to appoint administrative receiver

(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In Scotland, the holder of a qualifying floating charge in respect of a company's property may not appoint or apply to the court for the appointment of a receiver who on appointment would be an administrative receiver of property of the company.

(3) In subsections (1) and (2)—

"holder of a qualifying floating charge in respect of a company's property" has the same meaning as in paragraph 14 of Schedule B1 to this Act, and

"administrative receiver" has the meaning given by section 251.

(4) This section applies—

(a) to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument, and

(b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(5) An order under subsection (4)(a) may—

(a) make provision which applies generally or only for a specified purpose;

(b) make different provision for different purposes;

(c) make transitional provision.

(6) This section is subject to the exceptions specified in sections 72B to 72G.

72B First exception: capital market

(1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

(a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and

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(b) the arrangement involves the issue of a capital market investment.

(2) In subsection (1)—

"capital market arrangement" means an arrangement of a kind described in paragraph 1 of Schedule 2A, and

"capital market investment" means an investment of a kind described in paragraph 2 or 3 of that Schedule.

72C **Second exception: public-private partnership**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a public-private partnership project, and

(b) includes step-in rights.

(2) In this section "public-private partnership project" means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(3) In this section—

"step-in rights" has the meaning given by paragraph 6 of Schedule 2A, and

"project company" has the meaning given by paragraph 7 of that Schedule.

72D **Third exception: utilities**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a utility project, and

(b) includes step-in rights.

(2) In this section—

(a) "utility project" means a project designed wholly or mainly for the purpose of a regulated business,

(b) "regulated business" means a business of a kind listed in paragraph 10 of Schedule 2A,

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule, and

(d) "project company" has the meaning given by paragraph 7 of that Schedule.

72E **Fourth exception: project finance**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a financed project, and

(b) includes step-in rights.

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(2) In this section—

(a) a project is "financed" if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,

(b) "project company" has the meaning given by paragraph 7 of Schedule 2A, and

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule.

72F **Fifth exception: financial market**

Section 72A does not prevent the appointment of an administrative receiver of a company by virtue of—

(a) a market charge within the meaning of section 173 of the Companies Act 1989 (c. 40),

(b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),

(c) a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

72G **Sixth exception: registered social landlord**

Section 72A does not prevent the appointment of an administrative receiver of a company which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).

72H **Sections 72A to 72G: supplementary**

(1) Schedule 2A (which supplements sections 72B to 72G) shall have effect.

(2) The Secretary of State may by order—

(a) insert into this Act provision creating an additional exception to section 72A(1) or (2);

(b) provide for a provision of this Act which creates an exception to section 72A(1) or (2) to cease to have effect;

(c) amend section 72A in consequence of provision made under paragraph (a) or (b);

(d) amend any of sections 72B to 72G;

(e) amend Schedule 2A.

(3) An order under subsection (2) must be made by statutory instrument.

(4) An order under subsection (2) may make—

(a) provision which applies generally or only for a specified purpose;

(b) different provision for different purposes;

(c) consequential or supplementary provision;

(d) transitional provision.

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(5) An order under subsection (2)—

(a) in the case of an order under subsection (2)(e), shall be subject to annulment in pursuance of a resolution of either House of Parliament,

(b) in the case of an order under subsection (2)(d) varying the sum specified in section 72B(1)(a) or 72E(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to annulment in pursuance of a resolution of either House of Parliament, and

(c) in the case of any other order under subsection (2)(a) to (d), may not be made unless a draft has been laid before and approved by resolution of each House of Parliament."

(2) The Schedule 2A set out in Schedule 18 to this Act shall be inserted after Schedule 2 to the Insolvency Act 1986 (c. 45).

Commencement Information

I4 S. 250 wholly in force at 15.9.2003; s. 250 not in force at Royal Assent see s. 279; s. 250(1) in force for certain purposes at 18.3.2003 by S.I. 2003/765, **art. 2**, Sch., s. 250 in force at 15.9.2003 by S.I. 2003/2093, **art. 2(1)**, Sch. 1

251 Abolition of Crown preference

(1) The following paragraphs of Schedule 6 to the Insolvency Act 1986 (categories of preferential debts) shall cease to have effect—

(a) paragraphs 1 and 2 (debts due to Inland Revenue),

(b) paragraphs 3 to 5C(debts due to Customs and Excise), and

(c) paragraphs 6 and 7(social security contributions).

(2) The following paragraphs of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (c. 66) (list of preferred debts) shall cease to have effect—

(a) paragraph 1 (debts due to Inland Revenue),

(b) paragraph 2 (debts due to Customs and Excise), and

(c) paragraph 3 (social security contributions).

(3) In section 386 of the Insolvency Act 1986 (categories of preferential debts) for the parenthetical words after "Schedule 6 to this Act" there shall be substituted " (contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production) ".

252 Unsecured creditors

The following shall be inserted after section 176 of the Insolvency Act 1986 (winding up: preferential debt)—

"Property subject to floating charge

176A Share of assets for unsecured creditors

(1) This section applies where a floating charge relates to property of a company—

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(a) which has gone into liquidation,
(b) which is in administration,
(c) of which there is a provisional liquidator, or
(d) of which there is a receiver.

(2) The liquidator, administrator or receiver—
(a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and
(b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.

(3) Subsection (2) shall not apply to a company if—
(a) the company's net property is less than the prescribed minimum, and
(b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by—
(a) a voluntary arrangement in respect of the company, or
(b) a compromise or arrangement agreed under section 425 of the Companies Act (compromise with creditors and members).

(5) Subsection (2) shall also not apply to a company if—
(a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
(b) the court orders that subsection (2) shall not apply.

(6) In subsections (2) and (3) a company's net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(7) An order under subsection (2) prescribing part of a company's net property may, in particular, provide for its calculation—
(a) as a percentage of the company's net property, or
(b) as an aggregate of different percentages of different parts of the company's net property.

(8) An order under this section—
(a) must be made by statutory instrument, and
(b) shall be subject to annulment pursuant to a resolution of either House of Parliament.

(9) In this section—

"floating charge" means a charge which is a floating charge on its creation and which is created after the first order under subsection (2)(a) comes into force, and

"prescribed" means prescribed by order by the Secretary of State.

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(10) An order under this section may include transitional or incidental provision."

253 Liquidator's powers

The following shall be inserted in Part I of Schedule 4 to the Insolvency Act 1986 (c. 45) (liquidator's powers in winding up: powers exercisable only with sanction) after paragraph 3—

"3A Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423."

254 Application of insolvency law to foreign company

(1) The Secretary of State may by order provide for a provision of the Insolvency Act 1986 to apply (with or without modification) in relation to a company incorporated outside Great Britain.

(2) An order under this section—
- (a) may make provision generally or for a specified purpose only,
- (b) may make different provision for different purposes, and
- (c) may make transitional, consequential or incidental provision.

(3) An order under this section—
- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C368 S. 254: power to modify extended (5.10.2004) by Energy Act 2004 (c. 20), **ss. 170(2)(b)**, 198(2); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C369 S. 254 modified (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 84(b)**, 93(2)(3); S.I. 2011/2329, art. 3

C370 S. 254 power to modify extended (18.12.2011) by Energy Act 2011 (c. 16), **ss. 100(2)(b)**, 121(3)

255 Application of law about company arrangement or administration to non-company

(1) The Treasury may with the concurrence of the Secretary of State by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to—
- (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12),
- (b) a society registered under section 7(1)(b), (c), (d), (e) or (f) of the Friendly Societies Act 1974 (c. 46),
- (c) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
- (d) an unregistered friendly society.

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(2) In subsection (1) "company arrangement or administration provision" means—

(a) a provision of Part I of the Insolvency Act 1986 (company voluntary arrangements),

(b) a provision of Part II of that Act (administration), and

(c) **[**F220Part 26 of the Companies Act 2006**]** (c. 6) (compromise or arrangement with creditors).

(3) An order under this section may not provide for a company arrangement or administration provision to apply in relation to a society which is **[**F221—

(a) a private registered provider of social housing, or

(b)**]** registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under **[**F222Part 2 of the Housing (Scotland) Act 2010 (asp 17)**]** .

(4) An order under this section—

(a) may make provision generally or for a specified purpose only,

(b) may make different provision for different purposes, and

(c) may make transitional, consequential or incidental provision.

(5) Provision by virtue of subsection (4)(c) may, in particular—

(a) apply an enactment (with or without modification);

(b) amend an enactment.

(6) An order under this section—

(a) must be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F220 Words in s. 255(2)(c) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 225** (with arts. 6, 11, 12)

F221 Words in s. 255(3) inserted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 1(2), **Sch. 2 para. 119** (with art. 6, Sch. 3)

F222 Words in s. 255(3)(b) substituted (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), **Sch. para. 6**

Individuals

256 Duration of bankruptcy

(1) The following shall be substituted for section 279 of the Insolvency Act 1986 (c. 45) (duration of bankruptcy)—

"**279 Duration**

(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt under

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section 289 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until—

(a) the end of a specified period, or

(b) the fulfilment of a specified condition.

(4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In subsection (3)(b) "condition" includes a condition requiring that the court be satisfied of something.

(6) In the case of an individual who is adjudged bankrupt on a petition under section 264(1)(d)—

(a) subsections (1) to (5) shall not apply, and

(b) the bankrupt is discharged from bankruptcy by an order of the court under section 280.

(7) This section is without prejudice to any power of the court to annul a bankruptcy order."

(2) Schedule 19 (which makes transitional provision in relation to this section)—

(a) shall have effect, and

(b) is without prejudice to the generality of section 276.

257 Post-discharge restrictions

(1) The following shall be inserted after section 281 of the Insolvency Act 1986 (c. 45) (bankruptcy: effect of discharge)—

"**281A Post-discharge restrictions**

Schedule 4A to this Act (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect."

(2) The Schedule 4A set out in Schedule 20 to this Act shall be inserted after Schedule 4 to the Insolvency Act 1986.

(3) The amendments set out in Schedule 21 (which specify the effect of a bankruptcy restrictions order or undertaking) shall have effect.

258 Investigation by official receiver

The following shall be substituted for section 289 of the Insolvency Act 1986 (official receiver's duty to investigate)—

"**289 Investigatory duties of official receiver**

(1) The official receiver shall—

(a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and

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(b) make such report (if any) to the court as the official receiver thinks fit.

(2) Subsection (1) shall not apply to a case in which the official receiver thinks an investigation under that subsection unnecessary.

(3) Where a bankrupt makes an application for discharge under section 280—

(a) the official receiver shall make a report to the court about such matters as may be prescribed, and

(b) the court shall consider the report before determining the application.

(4) A report by the official receiver under this section shall in any proceedings be prima facie evidence of the facts stated in it."

259 Income payments order

(1) Section 310 of the Insolvency Act 1986 (income payments order) shall be amended as follows.

(2) In subsection (1) omit ", on the application of the trustee,".

(3) After subsection (1) insert—

"(1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt."

(4) For subsection (6) substitute—

"(6) An income payments order must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the order is made.

(6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge)."

260 Income payments agreement

The following shall be inserted after section 310 of the Insolvency Act 1986 (c. 45) (income payments order)—

"**310A Income payments agreement**

(1) In this section "income payments agreement" means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

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(2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—

(a) subsection (5) (receipts to form part of estate), and

(b) subsections (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to subsection (5)(b)) be varied—

(a) by written agreement between the parties, or

(b) by the court on an application made by the bankrupt, the trustee or the official receiver.

(7) The court—

(a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and

(b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).”

261 Bankrupt’s home

(1) The following shall be inserted after section 283 of the Insolvency Act 1986 (definition of bankrupt’s estate)—

“283A Bankrupt’s home ceasing to form part of estate

(1) This section applies where property comprised in the bankrupt’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt,

(b) the bankrupt’s spouse, or

(c) a former spouse of the bankrupt.

(2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—

(a) cease to be comprised in the bankrupt’s estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

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Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—

(a) the trustee realises the interest mentioned in subsection (1),

(b) the trustee applies for an order for sale in respect of the dwelling-house,

(c) the trustee applies for an order for possession of the dwelling-house,

(d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or

(e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.

(4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—

(a) cease to be comprised in the bankrupt's estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—

(a) in prescribed circumstances, and

(b) in such other circumstances as the court thinks appropriate.

(7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

(a) requiring or enabling the trustee of a bankrupt's estate to give notice that this section applies or does not apply;

(b) about the effect of a notice under paragraph (a);

(c) requiring the trustee of a bankrupt's estate to make an application to the Chief Land Registrar.

(9) Rules under subsection (8)(b) may, in particular—

(a) disapply this section;

(b) enable a court to disapply this section;

(c) make provision in consequence of a disapplication of this section;

(d) enable a court to make provision in consequence of a disapplication of this section;

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(e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation."

(2) Section 313 of the Insolvency Act 1986 (c. 45) (charge on bankrupt's home) shall be amended as follows—

(a) in subsection (2) for ", up to the value from time to time of the property secured," substitute " , up to the charged value from time to time, ",

(b) after subsection (2) insert—

"(2A) In subsection (2) the charged value means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus

(b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.",

and

(c) at the end insert—

"(5) But an order under section 3(5) of that Act may not vary a charged value."

(3) The following shall be inserted after section 313 of that Act—

"**313A Low value home: application for sale, possession or charge**

(1) This section applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the bankrupt,

(ii) the bankrupt's spouse, or

(iii) a former spouse of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

(2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

(3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2)."

(4) The following shall be inserted after section 307(2)(a) of the Insolvency Act 1986 (c. 45) (after-acquired property: exclusions)—

"(aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,".

(5) In section 384(2) of that Act (prescribed amounts) after "section 273;" insert—

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"section 313A;".

(6) In section 418(1) of that Act (monetary limits in bankruptcy) after the entry for section 273 insert—

"section 313A (value of property below which application for sale, possession or charge to be dismissed);".

(7) In subsection (8)—

(a) "pre-commencement bankrupt" means an individual who is adjudged bankrupt on a petition presented before subsection (1) above comes into force, and

(b) "the transitional period" is the period of three years beginning with the date on which subsection (1) above comes into force.

(8) If a pre-commencement bankrupt's estate includes an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of him, his spouse or a former spouse of his, at the end of the transitional period that interest shall—

(a) cease to be comprised in the estate, and

(b) vest in the bankrupt (without conveyance, assignment or transfer).

(9) But subsection (8) shall not apply if before or during the transitional period—

(a) any of the events mentioned in section 283A(3) of the Insolvency Act 1986 (c. 45) (inserted by subsection (1) above) occurs in relation to the interest or the dwelling-house, or

(b) the trustee obtains any order of a court, or makes any agreement with the bankrupt, in respect of the interest or the dwelling-house.

(10) Subsections 283A(4) to (9) of that Act shall have effect, with any necessary modifications, in relation to the provision made by subsections (7) to (9) above; in particular—

(a) a reference to the period mentioned in section 283A(2) shall be construed as a reference to the transitional period,

(b) in the application of section 283A(5) a reference to the date of the bankruptcy shall be construed as a reference to the date on which subsection (1) above comes into force, and

(c) a reference to the rules is a reference to rules made under section 412 of the Insolvency Act 1986 (for which purpose this section shall be treated as forming part of Parts VIII to XI of that Act).

262 Powers of trustee in bankruptcy

The following shall be inserted in Part I of Schedule 5 to the Insolvency Act 1986 (powers of trustee in bankruptcy: powers exercisable only with sanction) after paragraph 2—

"2A Power to bring legal proceedings under section 339, 340 or 423."

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263 Repeal of certain bankruptcy offences

The following sections of the Insolvency Act 1986 shall cease to have effect—

(a) section 361 (offence of failure to keep proper accounting records), and

(b) section 362 (offence of gambling and speculation).

264 Individual voluntary arrangement

(1) Schedule 22 (which makes provision about individual voluntary arrangements) shall have effect.

(2) The Secretary of State may by order amend the Insolvency Act 1986 so as to extend the provisions of sections 263B to 263G (which are inserted by Schedule 22 and provide a fast-track procedure for making an individual voluntary arrangement) to some or all cases other than those specified in section 263A as inserted by Schedule 22.

(3) An order under subsection (2)—

(a) must be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by each House of Parliament.

(4) An order under subsection (2) may make—

(a) consequential provision (which may include provision amending the Insolvency Act 1986 or another enactment);

(b) transitional provision.

265 Disqualification from office: justice of the peace

F223 . . . . . .

Textual Amendments

F223 S. 265 repealed (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(3), 110, **Sch. 10**; S.I. 2005/910, **art. 3(aa)(bb)**

266 Disqualification from office: Parliament

(1) The following shall be inserted before section 427 of the Insolvency Act 1986 (c. 45) (the title to which becomes " Disqualification from Parliament (Scotland and Northern Ireland) ")—

"426A **Disqualification from Parliament (England and Wales)**

(1) A person in respect of whom a bankruptcy restrictions order has effect shall be disqualified—

(a) from membership of the House of Commons,

(b) from sitting or voting in the House of Lords, and

(c) from sitting or voting in a committee of the House of Lords or a joint committee of both Houses.

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(2) If a member of the House of Commons becomes disqualified under this section, his seat shall be vacated.

(3) If a person who is disqualified under this section is returned as a member of the House of Commons, his return shall be void.

(4) No writ of summons shall be issued to a member of the House of Lords who is disqualified under this section.

(5) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the House of Commons or the House of Lords the court shall notify the Speaker of that House.

(6) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.

426B **Devolution**

(1) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the court shall notify the presiding officer of that body.

(2) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the Secretary of State shall notify the presiding officer of that body.

426C **Irrelevance of privilege**

(1) An enactment about insolvency applies in relation to a member of the House of Commons or the House of Lords irrespective of any Parliamentary privilege.

(2) In this section "enactment" includes a provision made by or under—
(a) an Act of the Scottish Parliament, or
(b) Northern Ireland legislation."

(2) In section 427 of the Insolvency Act 1986 the following shall cease to have effect—
(a) in subsection (1), the words "England and Wales or", and
(b) subsection (7).

(3) The Secretary of State may by order—
(a) provide for section 426A or 426B of that Act (as inserted by subsection (1) above) to have effect in relation to orders made or undertakings accepted in Scotland or Northern Ireland under a system which appears to the Secretary of State to be equivalent to the system operating under Schedule 4A to that Act (as inserted by section 257 of this Act);
(b) make consequential amendment of section 426A or 426B of that Act (as inserted by subsection (1) above);
(c) make other consequential amendment of an enactment.

(4) An order under this section may make transitional, consequential or incidental provision.

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(5) An order under this section—

(a) must be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

267 Disqualification from office: local government

(1) The following shall be substituted for section 80(1)(b) of the Local Government Act 1972 (c. 70) (disqualification for membership of local authority: bankrupt)—

"(b) is the subject of a bankruptcy restrictions order or interim order;".

(2) Section 81(1) and (2) of that Act (which amplify the provision substituted by subsection (1) above) shall cease to have effect.

268 Disqualification from office: general

(1) The Secretary of State may make an order under this section in relation to a disqualification provision.

(2) A "disqualification provision" is a provision which disqualifies (whether permanently or temporarily and whether absolutely or conditionally) a bankrupt or a class of bankrupts from—

(a) being elected or appointed to an office or position,

(b) holding an office or position, or

(c) becoming or remaining a member of a body or group.

(3) In subsection (2) the reference to a provision which disqualifies a person conditionally includes a reference to a provision which enables him to be dismissed.

(4) An order under subsection (1) may repeal or revoke the disqualification provision.

(5) An order under subsection (1) may amend, or modify the effect of, the disqualification provision—

(a) so as to reduce the class of bankrupts to whom the disqualification provision applies;

(b) so as to extend the disqualification provision to some or all individuals who are subject to a bankruptcy restrictions regime;

(c) so that the disqualification provision applies only to some or all individuals who are subject to a bankruptcy restrictions regime;

(d) so as to make the application of the disqualification provision wholly or partly subject to the discretion of a specified person, body or group.

(6) An order by virtue of subsection (5)(d) may provide for a discretion to be subject to—

(a) the approval of a specified person or body;

(b) appeal to a specified person or body.

(7) An order by virtue of subsection (5)(d)[F224]. . . may provide for a discretion to be subject to appeal to a specified court or tribunal **[**[F225]; but any such order must—

(a) if it relates to England and Wales, be made with the concurrence of the Lord Chief Justice of England and Wales;

(b) if it relates to Northern Ireland, be made with the concurrence of the Lord Chief Justice of Northern Ireland**]**

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(8) The Secretary of State may specify himself for the purposes of subsection (5)(d) or (6)(a) or (b).

(9) In this section "bankrupt" means an individual—

(a) who has been adjudged bankrupt by a court in England and Wales or in Northern Ireland,

(b) whose estate has been sequestrated by a court in Scotland, or

(c) who has made an agreement with creditors of his for a composition of debts, for a scheme of arrangement of affairs, for the grant of a trust deed or for some other kind of settlement or arrangement.

(10) In this section "bankruptcy restrictions regime" means an order or undertaking—

(a) under Schedule 4A to the Insolvency Act 1986 (c. 45) (bankruptcy restrictions orders), or

(b) under any system operating in Scotland or Northern Ireland which appears to the Secretary of State to be equivalent to the system operating under that Schedule.

(11) In this section—

"body" includes Parliament and any other legislative body, and

"provision" means—

(a) a provision made by an Act of Parliament passed before or in the same Session as this Act, and

(b) a provision made, before or in the same Session as this Act, under an Act of Parliament.

(12) An order under this section—

(a) may make provision generally or for a specified purpose only,

(b) may make different provision for different purposes, and

(c) may make transitional, consequential or incidental provision.

(13) An order under this section—

(a) must be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(14) A reference in this section to the Secretary of State shall be treated as a reference to the National Assembly for Wales in so far as it relates to a disqualification provision which—

(a) is made by the National Assembly for Wales, or

(b) relates to a function of the National Assembly.

(15) Provision made by virtue of subsection (7) is subject to any order of the Lord Chancellor under section 56(1) of the Access to Justice Act 1999 (c. 22) (appeals: jurisdiction).

[[F226](16) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under subsection (7).

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(17) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (7)—

(a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;

(b) a Lord Justice of Appeal (as defined in section 88 of that Act).**]**

Textual Amendments

F224 Words in s. 268(7) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 146, 148, Sch. 4 para. 305(2)(a), **Sch. 18 Pt. 2**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 11(x), 30(b)

F225 Words in s. 268(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 305(2)(b)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(x)

F226 S. 268(16)(17) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15, 148, **Sch. 4 para. 305(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1 para. 11(x)

Modifications etc. (not altering text)

C371 S. 268 applied (with modifications) (1.4.2004) by Local Government Act 2003 (c. 26), ss. 109(5), 129, **Sch. 4 para. 25**; S.I. 2003/2938, **art. 6(a)** (subject to transitional provisions and savings in art. 8, Sch.)

C372 S. 268 extended (with modifications) (1.4.2005) by Human Tissue Act 2004 (c. 30), ss. 56, 60, **Sch. 6 para. 6**; S.I. 2005/919, **art. 3**, Sch. (with transitional provisions in art. 2)

269 Minor and consequential amendments

Schedule 23 (minor and consequential amendments relating to individual insolvency) shall have effect.

Money

270 Fees

(1) The following shall be inserted after section 415 of the Insolvency Act 1986 (c. 45) (fees orders: individual insolvency)—

"**415A Fees orders (general)**

(1) The Secretary of State—

(a) may by order require a body to pay a fee in connection with the grant or maintenance of recognition of the body under section 391, and

(b) may refuse recognition, or revoke an order of recognition under section 391(1) by a further order, where a fee is not paid.

(2) The Secretary of State—

(a) may by order require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under section 393, and

(b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Secretary of State may by order require the payment of fees in respect of—

(a) the operation of the Insolvency Services Account;

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(b) payments into and out of that Account.

(4) The following provisions of section 414 apply to fees under this section as they apply to fees under that section—

(a) subsection (3) (manner of payment),

(b) subsection (5) (additional provision),

(c) subsection (6) (statutory instrument),

(d) subsection (7) (payment into Consolidated Fund), and

(e) subsection (9) (saving for rules of court).”

(2) An order made by virtue of subsection (1) may relate to the maintenance of recognition or authorisation granted before this section comes into force.

(3) At the end of section 392 of the Insolvency Act 1986 (c. 45) (authorisation of insolvency practitioner) there shall be added—

“(9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).”

(4) In section 440(2)(c) of that Act (provisions not extending to Scotland) after “415,” there shall be inserted “ 415A(3), ”.

Commencement Information

I5 S. 270 wholly in force at 1.4.2004; s. 270 not in force at Royal Assent see s. 279; s. 270(1)(2)(4) in force at 18.12.2003 by S.I. 2003/3340, **art. 3**, s. 270(3) in force at 1.4.2004 by S.I. 2003/2093, **art. 2(2)**, Sch. 2 (as amended by S.I. 2003/3340, art. 2(2))

271 Insolvency Services Account: interest

(1) The following shall be inserted after paragraph 16 of Schedule 8 to the Insolvency Act 1986 (company insolvency rules: money)—

“16A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.”

(2) The following shall be inserted after paragraph 21 of Schedule 9 to the Insolvency Act 1986 (individual insolvency rules: money)—

“21A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.”

272 Insolvency Services Accounts

(1) Section 405 of the Insolvency Act 1986 (operation of Investment Account) shall cease to have effect.

(2) The following shall be substituted for section 408 of that Act (recourse to Consolidated Fund)—

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"**408 Adjustment of balances**

(1) The Treasury may direct the payment out of the Consolidated Fund of sums into—

(a) the Insolvency Services Account;

(b) the Investment Account.

(2) The Treasury shall certify to the House of Commons the reason for any payment under subsection (1).

(3) The Secretary of State may pay sums out of the Insolvency Services Account into the Consolidated Fund.

(4) The National Debt Commissioners may pay sums out of the Investment Account into the Consolidated Fund."

PART 11

SUPPLEMENTARY

273 Interpretation

In this Act—

"the 1973 Act" means the Fair Trading Act 1973 (c. 41);

"the 1998 Act" means the Competition Act 1998 (c. 41);

"the Commission" means the Competition Commission;

"the Director" means the Director General of Fair Trading; and

"the OFT" means the Office of Fair Trading.

274 Provision of financial assistance for consumer purposes

The Secretary of State may give financial assistance to any person for the purpose of assisting—

(a) activities which the Secretary of State considers are of benefit to consumers; or

(b) the provision of—

(i) advice or information about consumer matters;

(ii) educational materials relating to consumer matters; or

(iii) advice or information to the Secretary of State in connection with the formulation of policy in respect of consumer matters.

275 Financial provision

There shall be paid out of money provided by Parliament—

(a) any expenditure incurred by the OFT, the Secretary of State, any other Minister of the Crown or a government department by virtue of this Act; and

(b) any increase attributable to this Act in the sums payable out of money so provided by virtue of any other Act.

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276 Transitional or transitory provision and savings

(1) Schedule 24 (which makes transitional and transitory provisions and savings) has effect.

(2) The Secretary of State may by order made by statutory instrument make such transitional or transitory provisions and savings as he considers appropriate in connection with the coming into force of any provision of this Act.

(3) An order under subsection (2) may modify any Act or subordinate legislation.

(4) Schedule 24 does not restrict the power under subsection (2) to make other transitional or transitory provisions and savings.

Subordinate Legislation Made

P1 S. 276(2) power partly exercised: 1.4.2003 appointed for specified provisions and purposes by {S.I. 2003/766}, art. 2, (with transitional and transitory provision in art. 3)
S. 276(2) power partly exercised: 20.6.2003 appointed for specified provisions and purposes by {S.I. 2003/1397}, art. 2 (with savings in arts. 4-12)
S. 276(2) power partly exercised: 15.9.2003 and 1.4.2004 appointed for specified provisions and purposes by {S.I. 2003/2093}, art. 2 (subject to transitional provisions in arts. 3-8) (as amended by S.I. 2003/2332 and S.I. 2003/3340)

Modifications etc. (not altering text)

C373 S. 276(2)(3) applied (29.12.2003) by Communications Act 2003 (c. 21), **ss. 389(2)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Commencement Information

I6 S. 276 wholly in force at 20.6.2003; s. 276 not in force at Royal Assent see s. 279; s. 276(1) in force for certain purposes and s. 276(2)-(4) in force at 18.3.2003 by S.I. 2003/765, **art. 2**, Sch., s. 276(1) in force for certain further purposes at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., s. 276(1) in force for remaining purposes at 20.6.2003 by S.I. 2003/1397, **art. 2(1)**, Sch.

277 Power to make consequential amendments etc.

(1) The Secretary of State may by order make such supplementary, incidental or consequential provision as he thinks appropriate—

(a) for the general purposes, or any particular purpose, of this Act; or

(b) in consequence of any provision made by or under this Act or for giving full effect to it.

(2) An order under this section may—

(a) modify any Act or subordinate legislation (including this Act);

(b) make incidental, supplementary, consequential, transitional, transitory or saving provision.

(3) The power to make an order under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The power conferred by this section is not restricted by any other provision of this Act.

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Modifications etc. (not altering text)

C374 S. 277 applied (29.12.2003) by Communications Act 2003 (c. 21), **ss. 389(2)-(4)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

C375 S. 277: power to modify extended (5.10.2004) by Energy Act 2004 (c. 20), **ss. 170(2)(a)**, 198(2); S.I. 2004/2575, **art. 2(1)**, Sch. 1

C376 S. 277 modified (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 84(a)**, 93(2)(3); S.I. 2011/2329, art. 3

C377 S. 277 power to modify extended (18.12.2011) by Energy Act 2011 (c. 16), **ss. 100(2)(a)**, 121(3)

278 Minor and consequential amendments and repeals

(1) Schedule 25 (which contains minor and consequential amendments) has effect.

(2) Schedule 26 (which contains repeals and revocations) has effect.

Commencement Information

I7 S. 278 partly in force; s. 278 not in force at Royal Assent see s. 279; s. 278 in force for certain purposes at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., s. 278 in force for certain further purposes at 20.6.2003 by S.I. 2003/1397, **art. 2(1)**, Sch., s. 278(2) in force for certain further purposes at 15.9.2003 and 1.4.2004 by S.I. 2003/2093, **art. 2**, Schs. 1, 2, s. 278 in force for certain further purposes at 29.12.2004 by S.I. 2004/3233, **art. 2**, Sch.

279 Commencement

The preceding provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.

Subordinate Legislation Made

P2 S. 279 power partly exercised: 18.3.2003 appointed for specified provisions by {S.I. 2003/765}, art. 2; 1.4.2003 by {S.I. 2003/766}, art. 2 (with transitional and transitory provision in art. 3); 20.6.2003 by {S.I. 2003/1397}, art. 2 (with savings in arts. 4-12); 18.12.2003 by {S.I. 2003/3340}, art. 3; 15.9.2003 and 1.4.2004 by {S.I. 2003/2093}, art. 2 (subject to transitional provisions in arts. 3-8) (as amended by S.I. 2003/2332 and S.I. 2003/3340); 18.12.2003 by {S.I. 2003/3340}, art. 3; 18.7.2004 by {S.I. 2004/1866}, art. 2; 29.12.2004 by {S.I. 2004/3233}, art. 2 (with transitional provisions and savings in arts. 3-5)

280 Extent

(1) Sections 256 to 265, 267, 269 and 272 extend only to England and Wales.

(2) Sections 204, 248 to 255 and 270 extend only to England and Wales and Scotland (but subsection (3) of section 415A as inserted by section 270 extends only to England and Wales).

(3) Any other modifications by this Act of an enactment have the same extent as the enactment being modified.

Status: *Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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)*

(4) Otherwise, this Act extends to England and Wales, Scotland and Northern Ireland.

281 Short title

This Act may be cited as the Enterprise Act 2002.

Status:
Point in time view as at 01/04/2013. This version of this Act contains provisions that are prospective.

Changes to legislation:
Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 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.