

SCHEDULES

SCHEDULE 14

Section 51(5)

REGULATORS: USE OF POWERS UNDER THE 1998 ACT

Gas Act 1986 (c. 44)

- 1 The Gas Act 1986 is amended as follows.
- 2 (1) Section 28 (orders for securing compliance) is amended as follows.
 - (2) In subsections (1), (2) and (4), for “(5) and” (in each place where it occurs) substitute “(4A) to”.
 - (3) After subsection (4) insert—
 - “(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
 - (4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
 - (4) In subsection (5), omit paragraph (c) and the “or” preceding it.
 - (5) In subsection (6)—
 - (a) in the words before paragraph (a), after “the Authority” insert “decides that it would be more appropriate to proceed under the Competition Act 1998 or”, and
 - (b) in paragraph (a), after “that it” insert “has so decided or”.
- 3 In section 30A (penalties), for subsection (2) substitute—
 - “(2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
 - (2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

Electricity Act 1989 (c. 29)

- 4 The Electricity Act 1989 is amended as follows.
- 5 (1) Section 25 (orders for securing compliance) is amended as follows.
 - (2) In subsections (1), (2) and (4), for “(5) and” (in each place where it occurs) substitute “(4A) to”.

Status: This is the original version (as it was originally enacted).

- (3) After subsection (4) insert—
- “(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- (4) In subsection (5), omit paragraph (d) and the “or” preceding it.
- (5) In subsection (6)—
- (a) in the words before paragraph (a), after “the Authority” insert “decides that it would be more appropriate to proceed under the Competition Act 1998 or”, and
- (b) in paragraph (a), after “that it” insert “has so decided or”.
- 6 In section 27A (penalties), for subsection (2) substitute—
- “(2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- 7 In section 43 (functions with respect to competition), in subsection (6), for the words from the beginning to “(3) above” substitute “If any question arises as to whether subsection (2) or (3) above applies to any particular case”.

Water Industry Act 1991 (c. 56)

- 8 The Water Industry Act 1991 is amended as follows.
- 9 (1) Section 19 (exception to duty to enforce) is amended as follows.
- (2) For subsection (1A) substitute—
- “(1A) Before making an enforcement order or confirming a provisional enforcement order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- (3) In subsection (3)—
- (a) in the words before paragraph (a), for “is satisfied as mentioned in subsection (1A) above” substitute “has decided that it would be more appropriate to proceed under the Competition Act 1998”, and
- (b) in paragraph (a), after “satisfied” insert “or has so decided”.
- 10 In section 22A (penalties), for subsection (13) substitute—

Status: This is the original version (as it was originally enacted).

“(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

Railways Act 1993 (c. 43)

11 The Railways Act 1993 is amended as follows.

12 (1) Section 55 (orders for securing compliance) is amended as follows.

(2) For subsection (5A) substitute—

“(5A) Before making a final order or making or confirming a provisional order, the Office of Rail Regulation shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(5AA) The Office of Rail Regulation shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

(3) In subsection (5D)(b), for “(5A)” substitute “(5AA)”.

13 In section 57A (penalties), for subsection (6) substitute—

“(6) Before imposing a penalty under this section, the Office of Rail Regulation shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(7) The Office of Rail Regulation shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

14 In section 67 (functions of the Office of Rail Regulation with respect to competition), in subsection (8), for the words from the beginning to “(3) above” substitute “If any question arises as to whether subsection (2) or (3) above applies to any particular case”.

Transport Act 2000 (c. 38)

15 (1) Section 21 of the Transport Act 2000 (exceptions to duties to secure compliance) is amended as follows.

(2) In subsection (1), omit paragraph (b) and the “or” preceding it.

(3) After subsection (5) insert—

“(6) Before making a final order or making or confirming a provisional order, the CAA must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(7) The CAA must not make a final order or make or confirm a provisional order to the extent that it considers that it would be more appropriate to proceed under the Competition Act 1998.”

Status: This is the original version (as it was originally enacted).

Communications Act 2003 (c. 21)

- 16 The Communications Act 2003 is amended as follows.
- 17 In section 94 (notification of contravention of SMP apparatus conditions), for subsection (10) substitute—
- “(10) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (10A) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.
- (10B) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.”
- 18 In section 96A (notification of contravention of condition other than SMP apparatus condition), for subsection (5) substitute—
- “(5) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (6) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.
- (7) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.”

Postal Services Act 2011 (c. 5)

- 19 In Schedule 7 to the Postal Services Act 2011 (enforcement of regulatory requirements) for paragraph 4 substitute—
- “4 (1) Before giving a notification under paragraph 2, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2) OFCOM must not give a notification under paragraph 2 if they consider that it would be more appropriate to proceed under the Competition Act 1998.
- (3) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.”

Health and Social Care Act 2012 (c. 7)

- 20 The Health and Social Care Act 2012 is amended as follows.
- 21 In section 105 (discretionary requirements), after subsection (3) insert—

Status: This is the original version (as it was originally enacted).

“(3A) Before imposing a discretionary requirement on a person mentioned in subsection (1)(b), Monitor must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(3B) Monitor must not impose a discretionary requirement on such a person if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

22 In section 106 (enforcement undertakings), after subsection (3) insert—

“(3A) Before accepting an enforcement undertaking from a person mentioned in subsection (1)(b), Monitor must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(3B) Monitor must not accept an enforcement undertaking from such a person if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

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

23 In article 46 of the Electricity (Northern Ireland) Order 1992, in paragraph (6), for the words from the beginning to “(2A) or (3)” substitute “If any question arises as to whether paragraph (2) or (3) applies to any particular case”.

The Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6))

24 The Energy (Northern Ireland) Order 2003 is amended as follows.

25 (1) Article 42 (orders for securing compliance) is amended as follows.

(2) In paragraph (1), for “, (5) and” substitute “and (5) to”.

(3) In paragraphs (2) and (4), for “(5) and” substitute “(5) to”.

(4) In paragraph (5), omit sub-paragraph (b) and the “or” preceding it.

(5) After that paragraph insert—

“(5A) Before making a final order or making or confirming a provisional order in relation to a licence holder, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(5B) The Authority shall not make a final order or make or confirm a provisional order in relation to a licence holder if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

(6) In paragraph (7)—

(a) in the words before sub-paragraph (a), after “(6)” insert “or decides that it would be more appropriate to proceed under the Competition Act 1998”, and

(b) in sub-paragraph (a), after “satisfied” insert “or has so decided”.

26 In article 45 (financial penalties), for paragraph (3) substitute—

“(3) Before imposing a penalty under paragraph (1) or (2) the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

Status: This is the original version (as it was originally enacted).

- (3A) The Authority shall not impose a penalty under paragraph (1) or (2) if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))

27 The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

28 (1) Article 31 (exceptions to duty to enforce) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (d) and the “or” preceding it.

(3) After that paragraph insert—

“(1A) Before making an enforcement order or confirming a provisional enforcement order under Article 30, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order under that Article if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

(4) In paragraph (3)—

(a) in the words before sub-paragraph (a)—

(i) for “, (c) or (d)” substitute “or (c)”, and

(ii) after “paragraph (1)” insert “or decides that it would be more appropriate to proceed under the Competition Act 1998”, and

(b) in sub-paragraph (a), after “so satisfied” insert “or has so decided”.

29 In article 35 (financial penalties), for paragraph (11) substitute—

“(11) Before imposing a penalty under this Article the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(12) The Authority shall not impose a penalty under this Article if it considers that it would be more appropriate to proceed under the Competition Act 1998.”