



# Competition Act 1998

## 1998 CHAPTER 41

An Act to make provision about competition and the abuse of a dominant position in the market; to confer powers in relation to investigations conducted in connection with Article 85 or 86 of the treaty establishing the European Community; to amend the Fair Trading Act 1973 in relation to information which may be required in connection with investigations under that Act; to make provision with respect to the meaning of “supply of services” in the Fair Trading Act 1973; and for connected purposes. [9th November 1998]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

**C1** Act: power to modify conferred (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 209(1)**, 279

VALID FROM 26/11/1998

## PART I

### COMPETITION

### Modifications etc. (not altering text)

- C2** **Pt. I:** certain functions made exercisable concurrently (26.11.1998 for certain purposes and *prosp.* otherwise) by [1984 c. 12](#), **s. 50(3)** (as substituted by [1998 c. 41](#), s. 66(5), **Sch. 10 Pt. II para. 2(6)** (with s. 73); [S.I. 1998/2750](#), **art. 2**)
- C3** **Pt. I** (except ss. 38(1)-(6), 51) amended (1.2.2001) by [2000 c. 38](#), **ss. 86(1)(3)**, 89 (with ss. 105(2)(d)(5), 106); [S.I. 2001/57](#), **art. 3(1)**, **Sch. 2 Pt. I**

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**Changes to legislation:** Competition Act 1998 is up to date with all changes known to be in force on or before 27 March 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)

- C4** Pt. I (except ss. 38(1)-(6), 51, 52(6) and (8) and 54) amended (1.2.2001) by 2000 c. 38, s. 86(4)(b) (5) (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I**  
 Pt. I (except ss. 38(1)-(6), 51) amended (1.2.2001) by 2000 c. 38, s. 86(7)(b) (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I**

VALID FROM 11/01/1999

## CHAPTER I

### AGREEMENTS

VALID FROM 01/03/2000

#### *Introduction*

#### **1 Enactments replaced.**

The following shall cease to have effect—

- (a) the Restrictive Practices Court Act 1976 (c. 33),
- (b) the Restrictive Trade Practices Act 1976 (c. 34),
- (c) the Resale Prices Act 1976 (c. 53), and
- (d) the Restrictive Trade Practices Act 1977 (c. 19).

#### **Commencement Information**

- 11** S. 1 partly in force; s. 1 was not in force at Royal Assent, see. s. 76(2)(3); s. 1(b) to (d) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

VALID FROM 01/03/2000

#### *The prohibition*

VALID FROM 18/06/2001

#### **2 Agreements etc. preventing, restricting or distorting competition.**

- (1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—
- (a) may affect trade within the United Kingdom, and
  - (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom,
- are prohibited unless they are exempt in accordance with the provisions of this Part.

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- (2) Subsection (1) applies, in particular, to agreements, decisions or practices which—
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.
- (4) Any agreement or decision which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).
- (6) Subsection (5) does not apply where the context otherwise requires.
- (7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.
- (8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

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

- C5** S. 2(1) excluded (18.6.2001) by 2000 c. 8, ss. 164(1)(2)(4); S.I. 2001/1820, art. 2, Sch.  
S. 2(1) excluded (3.9.2001) by 2000 c. 8, s. 311(9); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Excluded agreements*

**3 Excluded agreements.**

- (1) The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of—
- (a) Schedule 1 (mergers and concentrations);
  - (b) Schedule 2 (competition scrutiny under other enactments);
  - (c) Schedule 3 (planning obligations and other general exclusions); or
  - (d) Schedule 4 (professional rules).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter I prohibition, by—

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- (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend Schedule 3, with respect to the Chapter I prohibition, by—
- (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision—
    - (i) added by an order under this subsection; or
    - (ii) included in paragraph 1, 2, 8 or 9 of Schedule 3.
- (4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Secretary of State that agreements which fall within the additional exclusion—
- (a) do not in general have an adverse effect on competition, or
  - (b) are, in general, best considered under Chapter II or the <sup>M1</sup>Fair Trading Act 1973.
- (5) An order under subsection (2)(a) or (3)(a) may include provision (similar to that made with respect to any other exclusion provided by the relevant Schedule) for the exclusion concerned to cease to apply to a particular agreement.
- (6) Schedule 3 also gives the Secretary of State power to exclude agreements from the Chapter I prohibition in certain circumstances.

#### Commencement Information

- I2** S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 76(3); s. 3(1)(b) in force for certain purposes at 11.1.1999 and s. 3(1)(a)(c)(d)(2)-(6) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); s. 3(1)(b) fully in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### Marginal Citations

- M1** 1973 c. 41.

VALID FROM 01/03/2000

### *Exemptions*

#### **4 Individual exemptions.**

- (1) The Director may grant an exemption from the Chapter I prohibition with respect to a particular agreement if—
- (a) a request for an exemption has been made to him under section 14 by a party to the agreement; and
  - (b) the agreement is one to which section 9 applies.
- (2) An exemption granted under this section is referred to in this Part as an individual exemption.
- (3) The exemption—

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- (a) may be granted subject to such conditions or obligations as the Director considers it appropriate to impose; and
  - (b) has effect for such period as the Director considers appropriate.
- (4) That period must be specified in the grant of the exemption.
- (5) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.
- (6) On an application made in such way as may be specified by rules under section 51, the Director may extend the period for which an exemption has effect; but, if the rules so provide, he may do so only in specified circumstances.

## **5 Cancellation etc. of individual exemptions.**

- (1) If the Director has reasonable grounds for believing that there has been a material change of circumstance since he granted an individual exemption, he may by notice in writing—
- (a) cancel the exemption;
  - (b) vary or remove any condition or obligation; or
  - (c) impose one or more additional conditions or obligations.
- (2) If the Director has a reasonable suspicion that the information on which he based his decision to grant an individual exemption was incomplete, false or misleading in a material particular, he may by notice in writing take any of the steps mentioned in subsection (1).
- (3) Breach of a condition has the effect of cancelling the exemption.
- (4) Failure to comply with an obligation allows the Director, by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the Director under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.
- (6) If an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.
- (7) The Director may act under subsection (1), (2) or (4) on his own initiative or on a complaint made by any person.

## **6 Block exemptions.**

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the Director, likely to be agreements to which section 9 applies, the Director may recommend that the Secretary of State make an order specifying that category for the purposes of this section.
- (2) The Secretary of State may make an order (“a block exemption order”) giving effect to such a recommendation—
- (a) in the form in which the recommendation is made; or
  - (b) subject to such modifications as he considers appropriate.
- (3) An agreement which falls within a category specified in a block exemption order is exempt from the Chapter I prohibition.

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- (4) An exemption under this section is referred to in this Part as a block exemption.
- (5) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.
- (6) A block exemption order may provide—
  - (a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement;
  - (b) that if there is a failure to comply with an obligation imposed by the order, the Director may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the Director considers that a particular agreement is not one to which section 9 applies, he may cancel the block exemption in respect of that agreement.
- (7) A block exemption order may provide that the order is to cease to have effect at the end of a specified period.
- (8) In this section and section 7 “specified” means specified in a block exemption order.

#### **7 Block exemptions: opposition.**

- (1) A block exemption order may provide that a party to an agreement which—
  - (a) does not qualify for the block exemption created by the order, but
  - (b) satisfies specified criteria,
 may notify the Director of the agreement for the purposes of subsection (2).
- (2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) is to be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the Director—
  - (a) is opposed to its being so treated; and
  - (b) gives notice in writing to the party concerned of his opposition before the end of that period.
- (3) If the Director gives notice of his opposition under subsection (2), the notification under subsection (1) is to be treated as both notification under section 14 and as a request for an individual exemption made under subsection (3) of that section.
- (4) In this section “notice period” means such period as may be specified with a view to giving the Director sufficient time to consider whether to oppose under subsection (2).

#### **8 Block exemptions: procedure.**

- (1) Before making a recommendation under section 6(1), the Director must—
  - (a) publish details of his proposed recommendation in such a way as he thinks most suitable for bringing it to the attention of those likely to be affected; and
  - (b) consider any representations about it which are made to him.

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- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the Director of the proposed modifications and take into account any comments made by the Director.
- (3) If, in the opinion of the Director, it is appropriate to vary or revoke a block exemption order he may make a recommendation to that effect to the Secretary of State.
- (4) Subsection (1) also applies to any proposed recommendation under subsection (3).
- (5) Before exercising his power to vary or revoke a block exemption order (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—
  - (a) inform the Director of the proposed variation or revocation; and
  - (b) take into account any comments made by the Director.
- (6) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

## **9 The criteria for individual and block exemptions.**

This section applies to any agreement which—

- (a) contributes to—
  - (i) improving production or distribution, or
  - (ii) promoting technical or economic progress,while allowing consumers a fair share of the resulting benefit; but
- (b) does not—
  - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
  - (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

## **10 Parallel exemptions.**

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from the Community prohibition—
  - (a) by virtue of a Regulation,
  - (b) because it has been given exemption by the Commission, or
  - (c) because it has been notified to the Commission under the appropriate opposition or objection procedure and—
    - (i) the time for opposing, or objecting to, the agreement has expired and the Commission has not opposed it; or
    - (ii) the Commission has opposed, or objected to, the agreement but has withdrawn its opposition or objection.
- (2) An agreement is exempt from the Chapter I prohibition if it does not affect trade between Member States but otherwise falls within a category of agreement which is exempt from the Community prohibition by virtue of a Regulation.

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- (3) An exemption from the Chapter I prohibition under this section is referred to in this Part as a parallel exemption.
- (4) A parallel exemption—
  - (a) takes effect on the date on which the relevant exemption from the Community prohibition takes effect or, in the case of a parallel exemption under subsection (2), would take effect if the agreement in question affected trade between Member States; and
  - (b) ceases to have effect—
    - (i) if the relevant exemption from the Community prohibition ceases to have effect; or
    - (ii) on being cancelled by virtue of subsection (5) or (7).
- (5) In such circumstances and manner as may be specified in rules made under section 51, the Director may—
  - (a) impose conditions or obligations subject to which a parallel exemption is to have effect;
  - (b) vary or remove any such condition or obligation;
  - (c) impose one or more additional conditions or obligations;
  - (d) cancel the exemption.
- (6) In such circumstances as may be specified in rules made under section 51, the date from which cancellation of an exemption is to take effect may be earlier than the date on which notice of cancellation is given.
- (7) Breach of a condition imposed by the Director has the effect of cancelling the exemption.
- (8) In exercising his powers under this section, the Director may require any person who is a party to the agreement in question to give him such information as he may require.
- (9) For the purpose of this section references to an agreement being exempt from the Community prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation or a decision by the Commission.
- (10) In this section—

“the Community prohibition” means the prohibition contained in—

  - (a) paragraph 1 of Article 85;
  - (b) any corresponding provision replacing, or otherwise derived from, that provision;
  - (c) such other Regulation as the Secretary of State may by order specify; and

“Regulation” means a Regulation adopted by the Commission or by the Council.
- (11) This section has effect in relation to the prohibition contained in paragraph 1 of Article 53 of the EEA Agreement (and the EFTA Surveillance Authority) as it has effect in relation to the Community prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.



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## 11 Exemption for certain other agreements.

- (1) The fact that a ruling may be given by virtue of Article 88 of the Treaty on the question whether or not agreements of a particular kind are prohibited by Article 85 does not prevent such agreements from being subject to the Chapter I prohibition.
- (2) But the Secretary of State may by regulations make such provision as he considers appropriate for the purpose of granting an exemption from the Chapter I prohibition, in prescribed circumstances, in respect of such agreements.
- (3) An exemption from the Chapter I prohibition by virtue of regulations under this section is referred to in this Part as a section 11 exemption.

### *Notification*

## 12 Requests for Director to examine agreements.

- (1) Sections 13 and 14 provide for an agreement to be examined by the Director on the application of a party to the agreement who thinks that it may infringe the Chapter I prohibition.
- (2) Schedule 5 provides for the procedure to be followed—
  - (a) by any person making such an application; and
  - (b) by the Director, in considering such an application.
- (3) The Secretary of State may by regulations make provision as to the application of sections 13 to 16 and Schedule 5, with such modifications (if any) as may be prescribed, in cases where the Director—
  - (a) has given a direction withdrawing an exclusion; or
  - (b) is considering whether to give such a direction.

### **Commencement Information**

- I3** S. 12 wholly in force; s. 12 not in force at Royal Assent see s. 76(3); s. 12(3) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); s. 12(1)(2) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

VALID FROM 01/03/2000

## 13 Notification for guidance.

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
  - (a) notify the Director of the agreement; and
  - (b) apply to him for guidance.
- (2) On an application under this section, the Director may give the applicant guidance as to whether or not, in his view, the agreement is likely to infringe the Chapter I prohibition.

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- (3) If the Director considers that the agreement is likely to infringe the prohibition if it is not exempt, his guidance may indicate—
- (a) whether the agreement is likely to be exempt from the prohibition under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (b) whether he would be likely to grant the agreement an individual exemption if asked to do so.
- (4) If an agreement to which the prohibition applies has been notified to the Director under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the Director when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

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

C6 S. 13 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 4

VALID FROM 01/03/2000

**14 Notification for a decision.**

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the Director of the agreement; and
  - (b) apply to him for a decision.
- (2) On an application under this section, the Director may make a decision as to—
- (a) whether the Chapter I prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.
- (3) If an agreement is notified to the Director under this section, the application may include a request for the agreement to which it relates to be granted an individual exemption.
- (4) If an agreement to which the prohibition applies has been notified to the Director under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and

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- (b) ending with such date as may be specified in a notice in writing given to the applicant by the Director when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

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

C7 S. 14 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 5

VALID FROM 01/03/2000

**15 Effect of guidance.**

- (1) This section applies to an agreement if the Director has determined an application under section 13 by giving guidance that—
- (a) the agreement is unlikely to infringe the Chapter I prohibition, regardless of whether or not it is exempt;
  - (b) the agreement is likely to be exempt under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (c) he would be likely to grant the agreement an individual exemption if asked to do so.
- (2) The Director is to take no further action under this Part with respect to an agreement to which this section applies, unless—
- (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his guidance;
  - (b) he has a reasonable suspicion that the information on which he based his guidance was incomplete, false or misleading in a material particular;
  - (c) one of the parties to the agreement applies to him for a decision under section 14 with respect to the agreement; or
  - (d) a complaint about the agreement has been made to him by a person who is not a party to the agreement.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
- (a) he takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) he considers it likely that the agreement will infringe the prohibition; and
  - (c) he gives notice in writing to the party on whose application the guidance was given that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
- (a) on which he based his guidance, and

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(b) which was provided to him by a party to the agreement, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

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

**C8** S. 15 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 6](#)

VALID FROM 01/03/2000

**16 Effect of a decision that the Chapter I prohibition has not been infringed.**

- (1) This section applies to an agreement if the Director has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The Director is to take no further action under this Part with respect to the agreement unless—
  - (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or
  - (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
  - (a) he takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the agreement will infringe the prohibition; and
  - (c) he gives notice in writing to the party on whose application the decision was made that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
  - (a) on which he based his decision, and
  - (b) which was provided to him by a party to the agreement, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

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

**C9** S. 16 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 7](#)

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VALID FROM 11/01/1999

## CHAPTER II

### ABUSE OF DOMINANT POSITION

VALID FROM 01/03/2000

#### *Introduction*

#### **17 Enactments replaced.**

Sections 2 to 10 of the <sup>M2</sup>Competition Act 1980 (control of anti-competitive practices) shall cease to have effect.

#### **Marginal Citations**

**M2** 1980 c. 21.

VALID FROM 01/03/2000

#### *The prohibition*

#### **18 Abuse of dominant position.**

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section—

“dominant position” means a dominant position within the United Kingdom; and

“the United Kingdom” means the United Kingdom or any part of it.

**Status:** Point in time view as at 09/11/1998. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Competition Act 1998 is up to date with all changes known to be in force on or before 27 March 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) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

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

- C10** S. 18(1) excluded (18.6.2001) by 2000 c. 8, s. 164(3)(5); S.I. 2001/1820, art. 2, Sch. s. 18(1) excluded (3.9.2001) by 2000 c. 8, s. 312(2); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Excluded cases*

**19 Excluded cases.**

- (1) The Chapter II prohibition does not apply in any of the cases in which it is excluded by or as a result of—
- (a) Schedule 1 (mergers and concentrations); or
  - (b) Schedule 3 (general exclusions).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II prohibition, by—
- (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.
- (4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

VALID FROM 01/03/2000

*Notification*

**20 Requests for Director to consider conduct.**

- (1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the Director on the application of that person.
- (2) Schedule 6 provides for the procedure to be followed—
- (a) by any person making an application, and
  - (b) by the Director, in considering an application.

**21 Notification for guidance.**

- (1) A person who applies for conduct to be considered under this section must—
- (a) notify the Director of it; and
  - (b) apply to him for guidance.

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- (2) On an application under this section, the Director may give the applicant guidance as to whether or not, in his view, the conduct is likely to infringe the Chapter II prohibition.

## **22 Notification for a decision.**

- (1) A person who applies for conduct to be considered under this section must—
- (a) notify the Director of it; and
  - (b) apply to him for a decision.
- (2) On an application under this section, the Director may make a decision as to—
- (a) whether the Chapter II prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion.

## **23 Effect of guidance.**

- (1) This section applies to conduct if the Director has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The Director is to take no further action under this Part with respect to the conduct to which this section applies, unless—
- (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his guidance;
  - (b) he has a reasonable suspicion that the information on which he based his guidance was incomplete, false or misleading in a material particular; or
  - (c) a complaint about the conduct has been made to him.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
- (a) he takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the conduct will infringe the prohibition; and
  - (c) he gives notice in writing to the undertaking on whose application the guidance was given that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
- (a) on which he based his guidance, and
  - (b) which was provided to him by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

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**24 Effect of a decision that the Chapter II prohibition has not been infringed.**

- (1) This section applies to conduct if the Director has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.
- (2) The Director is to take no further action under this Part with respect to the conduct unless—
  - (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or
  - (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the Director may remove the immunity given by subsection (3) if—
  - (a) he takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) he considers that it is likely that the conduct will infringe the prohibition; and
  - (c) he gives notice in writing to the undertaking on whose application the decision was made that he is removing the immunity as from the date specified in his notice.
- (5) If the Director has a reasonable suspicion that information—
  - (a) on which he based his decision, and
  - (b) which was provided to him by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

VALID FROM 11/01/1999

**CHAPTER III**

INVESTIGATION AND ENFORCEMENT

VALID FROM 01/03/2000

*Investigations*

**25 Director's power to investigate.**

The Director may conduct an investigation if there are reasonable grounds for suspecting—

- (a) that the Chapter I prohibition has been infringed; or



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(b) that the Chapter II prohibition has been infringed.

## 26 Powers when conducting investigations.

- (1) For the purposes of an investigation under section 25, the Director may require any person to produce to him a specified document, or to provide him with specified information, which he considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—
  - (a) the subject matter and purpose of the investigation; and
  - (b) the nature of the offences created by sections 42 to 44.
- (4) In subsection (1) “specified” means—
  - (a) specified, or described, in the notice; or
  - (b) falling within a category which is specified, or described, in the notice.
- (5) The Director may also specify in the notice—
  - (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
  - (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
  - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

### Modifications etc. (not altering text)

**C11** S. 26 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 204(2), 279)

## 27 Power to enter premises without a warrant.

- (1) Any officer of the Director who is authorised in writing by the Director to do so (“an investigating officer”) may enter any premises in connection with an investigation under section 25.
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—
  - (a) gives at least two working days’ notice of the intended entry;
  - (b) indicates the subject matter and purpose of the investigation; and
  - (c) indicates the nature of the offences created by sections 42 to 44.

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- (3) Subsection (2) does not apply—
- (a) if the Director has a reasonable suspicion that the premises are, or have been, occupied by—
    - (i) a party to an agreement which he is investigating under section 25(a); or
    - (ii) an undertaking the conduct of which he is investigating under section 25(b); or
  - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
  - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (a) take with him such equipment as appears to him to be necessary;
  - (b) require any person on the premises—
    - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
    - (ii) if the document is produced, to provide an explanation of it;
  - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
  - (d) take copies of, or extracts from, any document which is produced;
  - (e) require any information which is held in a computer and is accessible from the premises and which the investigating 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.

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

**C12** S. 27 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

**28 Power to enter premises under a warrant.**

- (1) On an application made by the Director to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any premises documents—
    - (i) the production of which has been required under section 26 or 27; and
    - (ii) which have not been produced as required;
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any premises documents which the Director has power under section 26 to require to be produced; and

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- (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
  - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the Director, and any other of his officers whom he has authorised in writing to accompany the named officer—
  - (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) 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;
  - (f) to require any information which is held in a computer 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.
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

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

- C13** S. 28 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)
- C14** S. 28(2): powers of seizure extended (prosp.) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), **Sch. 1 Pt. 1 para. 67**
- C15** S. 28(2)(f) modified (prosp.) by 2001 c. 16, **ss. 63(2)(h)**, 138(2)
- C16** S. 28(7) applied (prosp.) by 2001 c. 16, **ss. 57(1)(n)(2)(4)**, 138(2)

**29 Entry of premises under warrant: supplementary.**

- (1) A warrant issued under section 28 must indicate—
  - (a) the subject matter and purpose of the investigation;
  - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
  - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
  - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
  - “named officer” means the officer named in the warrant; and
  - “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

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

- C17** S. 29 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

**30 Privileged communications.**

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

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(3) In the application of this section to Scotland—

- (a) references to the High Court are to be read as references to the Court of Session; and
- (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

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

**C18** S. 30 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

**31 Decisions following an investigation.**

- (1) Subsection (2) applies if, as the result of an investigation conducted under section 25, the Director proposes to make—
  - (a) a decision that the Chapter I prohibition has been infringed, or
  - (b) a decision that the Chapter II prohibition has been infringed.
- (2) Before making the decision, the Director must—
  - (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
  - (b) give that person (or those persons) an opportunity to make representations.

*Enforcement*

VALID FROM 01/03/2000

**32 Directions in relation to agreements.**

- (1) If the Director has made a decision that an agreement infringes the Chapter I prohibition, he may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the Director's decision is made on his own initiative or on an application made to him under this Part.
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the parties to the agreement to modify the agreement; or
  - (b) requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

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VALID FROM 01/03/2000

### 33 Directions in relation to conduct.

- (1) If the Director has made a decision that conduct infringes the Chapter II prohibition, he may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the Director’s decision is made on his own initiative or on an application made to him under this Part.
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the person concerned to modify the conduct in question; or
  - (b) requiring him to cease that conduct.
- (4) A direction under this section must be given in writing.

VALID FROM 01/03/2000

### 34 Enforcement of directions.

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the Director may apply to the court for an order—
  - (a) requiring the defaulter to make good his default within a time specified in the order; or
  - (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
  - (a) the person in default; or
  - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

VALID FROM 01/03/2000

### 35 Interim measures.

- (1) This section applies if the Director—
  - (a) has a reasonable suspicion that the Chapter I prohibition has been infringed, or
  - (b) has a reasonable suspicion that the Chapter II prohibition has been infringed,
 but has not completed his investigation into the matter.

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- (2) If the Director considers that it is necessary for him to act under this section as a matter of urgency for the purpose—
  - (a) of preventing serious, irreparable damage to a particular person or category of person, or
  - (b) of protecting the public interest,he may give such directions as he considers appropriate for that purpose.
- (3) Before giving a direction under this section, the Director must—
  - (a) give written notice to the person (or persons) to whom he proposes to give the direction; and
  - (b) give that person (or each of them) an opportunity to make representations.
- (4) A notice under subsection (3) must indicate the nature of the direction which the Director is proposing to give and his reasons for wishing to give it.
- (5) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 32 or (as appropriate) section 33.
- (6) In the case of a suspected infringement of the Chapter I prohibition, sections 32(3) and 34 also apply to directions given under this section.
- (7) In the case of a suspected infringement of the Chapter II prohibition, sections 33(3) and 34 also apply to directions given under this section.

VALID FROM 01/03/2000

### **36 Penalty for infringing Chapter I or Chapter II prohibition.**

- (1) On making a decision that an agreement has infringed the Chapter I prohibition, the Director may require an undertaking which is a party to the agreement to pay him a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition, the Director may require the undertaking concerned to pay him a penalty in respect of the infringement.
- (3) The Director may impose a penalty on an undertaking under subsection (1) or (2) only if he is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
- (4) Subsection (1) is subject to section 39 and does not apply if the Director is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.
- (5) Subsection (2) is subject to section 40 and does not apply if the Director is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.
- (6) Notice of a penalty under this section must—
  - (a) be in writing; and
  - (b) specify the date before which the penalty is required to be paid.

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- (7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.
- (8) No penalty fixed by the Director under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).
- (9) Any sums received by the Director under this section are to be paid into the Consolidated Fund.

VALID FROM 01/03/2000

### **37 Recovery of penalties.**

- (1) If the specified date in a penalty notice has passed and—
  - (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
  - (b) such an appeal has been made and determined,
 the Director may recover from the undertaking, as a civil debt due to him, any amount payable under the penalty notice which remains outstanding.
- (2) In this section—
  - “penalty notice” means a notice given under section 36; and
  - “specified date” means the date specified in the penalty notice.

### **38 The appropriate level of a penalty.**

- (1) The Director must prepare and publish guidance as to the appropriate amount of any penalty under this Part.
- (2) The Director may at any time alter the guidance.
- (3) If the guidance is altered, the Director must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The Director may, after consulting the Secretary of State, choose how he publishes his guidance.
- (6) If the Director is preparing or altering guidance under this section he must consult such persons as he considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) When setting the amount of a penalty under this Part, the Director must have regard to the guidance for the time being in force under this section.



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- (9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the Director, an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.
- (10) In subsection (9) “the appropriate court” means—
- in relation to England and Wales, the Court of Appeal;
  - in relation to Scotland, the Court of Session;
  - in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
  - the House of Lords.

#### Commencement Information

- 14** S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 76(3); s. 38(1)-(7) in force at 11.1.1999 by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#); s. 38(8)-(10) in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

VALID FROM 01/03/2000

### 39 Limited immunity for small agreements.

- (1) In this section “small agreement” means an agreement—
- which falls within a category prescribed for the purposes of this section; but
  - is not a price fixing agreement.
- (2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—
- the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);
  - the share of the market affected by the agreement (determined in that way).
- (3) A party to a small agreement is immune from the effect of section 36(1); but the Director may withdraw that immunity under subsection (4).
- (4) If the Director has investigated a small agreement, he may make a decision withdrawing the immunity given by subsection (3) if, as a result of his investigation, he considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The Director must give each of the parties in respect of which immunity is withdrawn written notice of his decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.

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- (8) In determining the withdrawal date, the Director must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.
- (9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

VALID FROM 01/03/2000

#### **40 Limited immunity in relation to the Chapter II prohibition.**

- (1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.
- (2) The criteria by reference to which a category is prescribed may, in particular, include—
- (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the conduct (determined in that way).
- (3) A person is immune from the effect of section 36(2) if his conduct is conduct of minor significance; but the Director may withdraw that immunity under subsection (4).
- (4) If the Director has investigated conduct of minor significance, he may make a decision withdrawing the immunity given by subsection (3) if, as a result of his investigation, he considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The Director must give the person, or persons, whose immunity has been withdrawn written notice of his decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the Director must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

VALID FROM 01/03/2000

#### **41 Agreements notified to the Commission.**

- (1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as

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to whether an exemption will be granted under Article 85 with respect to the agreement.

- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the Director from investigating it under this Part.
- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.

VALID FROM 01/03/2000

### *Offences*

#### **42 Offences.**

- (1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 26, 27 or 28.
- (2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—
  - (a) that the document was not in his possession or under his control; and
  - (b) that it was not reasonably practicable for him to comply with the requirement.
- (3) If a person is charged with an offence under subsection (1) in respect of a requirement—
  - (a) to provide information,
  - (b) to provide an explanation of a document, or
  - (c) to state where a document is to be found,it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 26 or 27 is not an offence if the person imposing the requirement has failed to act in accordance with that section.
- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.
- (6) A person guilty of an offence under subsection (1) or (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 is guilty of an offence and 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.

#### **43 Destroying or falsifying documents.**

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27 or 28—
- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
  - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is 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.

#### **44 False or misleading information.**

- (1) If information is provided by a person to the Director in connection with any function of the Director under this Part, that person is guilty of an offence if—
- (a) the information is false or misleading in a material particular, and
  - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
  - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the Director in connection with any of his functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is 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.

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

**C19** S. 44 applied (18.6.2001) by [2000 c. 8, s. 399](#); S.I. 2001/1820, art. 2, [Sch.](#)

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VALID FROM 01/04/1999

## CHAPTER IV

### THE COMPETITION COMMISSION AND APPEALS

#### *The Commission*

#### **45 The Competition Commission.**

- (1) There is to be a body corporate known as the Competition Commission.
- (2) The Commission is to have such functions as are conferred on it by or as a result of this Act.
- (3) The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission.
- (4) In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission.
- (5) The Secretary of State may by order make such consequential, supplemental and incidental provision as he considers appropriate in connection with—
  - (a) the dissolution of the Monopolies and Mergers Commission; and
  - (b) the transfer of functions effected by subsection (3).
- (6) An order made under subsection (5) may, in particular, include provision—
  - (a) for the transfer of property, rights, obligations and liabilities and the continuation of proceedings, investigations and other matters; or
  - (b) amending any enactment which makes provision with respect to the Monopolies and Mergers Commission or any of its functions.
- (7) Schedule 7 makes further provision about the Competition Commission.

#### *Appeals*

VALID FROM 01/03/2000

#### **46 Appealable decisions.**

- (1) Any party to an agreement in respect of which the Director has made a decision may appeal to the Competition Commission against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the Director has made a decision may appeal to the Competition Commission against, or with respect to, the decision.
- (3) In this section “decision” means a decision of the Director—
  - (a) as to whether the Chapter I prohibition has been infringed,

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- (b) as to whether the Chapter II prohibition has been infringed,
  - (c) as to whether to grant an individual exemption,
  - (d) in respect of an individual exemption—
    - (i) as to whether to impose any condition or obligation under section 4(3)(a) or 5(1)(c),
    - (ii) where such a condition or obligation has been imposed, as to the condition or obligation,
    - (iii) as to the period fixed under section 4(3)(b), or
    - (iv) as to the date fixed under section 4(5),
  - (e) as to—
    - (i) whether to extend the period for which an individual exemption has effect, or
    - (ii) the period of any such extension,
  - (f) cancelling an exemption,
  - (g) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,
  - (h) withdrawing or varying any of the decisions in paragraphs (a) to (f) following an application under section 47(1),
- and includes a direction given under section 32, 33 or 35 and such other decision as may be prescribed.

(4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

(5) Part I of Schedule 8 makes further provision about appeals.

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

**C20** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), **rule 3**

Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), **rule 6**

VALID FROM 01/03/2000

**47 Third party appeals.**

- (1) A person who does not fall within section 46(1) or (2) may apply to the Director asking him to withdraw or vary a decision (“the relevant decision”) falling within paragraphs (a) to (f) of section 46(3) or such other decision as may be prescribed.
- (2) The application must—
  - (a) be made in writing, within such period as the Director may specify in rules under section 51; and
  - (b) give the applicant’s reasons for considering that the relevant decision should be withdrawn or (as the case may be) varied.
- (3) If the Director decides—
  - (a) that the applicant does not have a sufficient interest in the relevant decision,

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- (b) that, in the case of an applicant claiming to represent persons who have such an interest, the applicant does not represent such persons, or
  - (c) that the persons represented by the applicant do not have such an interest, he must notify the applicant of his decision.
- (4) If the Director, having considered the application, decides that it does not show sufficient reason why he should withdraw or vary the relevant decision, he must notify the applicant of his decision.
- (5) Otherwise, the Director must deal with the application in accordance with such procedure as may be specified in rules under section 51.
- (6) The applicant may appeal to the Competition Commission against a decision of the Director notified under subsection (3) or (4).
- (7) The making of an application does not suspend the effect of the relevant decision.

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

- C21** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), rule. 3  
Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), [rule 6](#)

**48 Appeal tribunals.**

- (1) Any appeal made to the Competition Commission under section 46 or 47 is to be determined by an appeal tribunal.
- (2) The Secretary of State may, after consulting the President of the Competition Commission Appeal Tribunals and such other persons as he considers appropriate, make rules with respect to appeals and appeal tribunals.
- (3) The rules may confer functions on the President.
- (4) Part II of Schedule 8 makes further provision about rules made under this section but is not to be taken as restricting the Secretary of State's powers under this section.

**49 Appeals on point of law etc.**

- (1) An appeal lies—
  - (a) on a point of law arising from a decision of an appeal tribunal, or
  - (b) from any decision of an appeal tribunal as to the amount of a penalty.
- (2) An appeal under this section may be made only—
  - (a) to the appropriate court;
  - (b) with leave; and
  - (c) at the instance of a party or at the instance of a person who has a sufficient interest in the matter.
- (3) Rules under section 48 may make provision for regulating or prescribing any matters incidental to or consequential upon an appeal under this section.
- (4) In subsection (2)—

“the appropriate court” means—

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- (a) in relation to proceedings before a tribunal in England and Wales, the Court of Appeal;
  - (b) in relation to proceedings before a tribunal in Scotland, the Court of Session;
  - (c) in relation to proceedings before a tribunal in Northern Ireland, the Court of Appeal in Northern Ireland;
- “leave” means leave of the tribunal in question or of the appropriate court; and
- “party”, in relation to a decision, means a person who was a party to the proceedings in which the decision was made.

#### Commencement Information

- I5** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 76(3); s. 49(3) in force at 1.4.1999 by S.I. 1999/505, **art. 2 Sch. 2**; s. 49(1)(2) and (4) in force at 1.3.2000 by S.I. 2000/344, **art. 2, Sch.**

## CHAPTER V

### MISCELLANEOUS

VALID FROM 11/01/1999

#### *Vertical agreements and land agreements*

#### **50 Vertical agreements and land agreements.**

- (1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—
  - (a) vertical agreements, or
  - (b) land agreements,
 with such modifications as may be prescribed.
- (2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—
  - (a) vertical agreements, or land agreements, in general; or
  - (b) vertical agreements, or land agreements, of any prescribed description.
- (3) An order may empower the Director to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.
- (4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.
- (5) In this section—
 

“land agreement” and “vertical agreement” have such meaning as may be prescribed; and



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“prescribed” means prescribed by an order.

*Director’s rules, guidance and fees*

**51 Rules.**

- (1) The Director may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as he considers appropriate.
- (2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the Director’s powers under this section.
- (3) If the Director is preparing rules under this section he must consult such persons as he considers appropriate.
- (4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (5) No rule made by the Director is to come into operation until it has been approved by an order made by the Secretary of State.
- (6) The Secretary of State may approve any rule made by the Director—
  - (a) in the form in which it is submitted; or
  - (b) subject to such modifications as he considers appropriate.
- (7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the Director of the proposed modifications and take into account any comments made by the Director.
- (8) Subsections (5) to (7) apply also to any alteration of the rules made by the Director.
- (9) The Secretary of State may, after consulting the Director, by order vary or revoke any rules made under this section.
- (10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the Director to exercise his powers under this section and make rules about that matter.

**52 Advice and information.**

- (1) As soon as is reasonably practicable after the passing of this Act, the Director must prepare and publish general advice and information about—
  - (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
  - (b) the enforcement of those prohibitions.
- (2) The Director may at any time publish revised, or new, advice or information.
- (3) Advice and information published under this section must be prepared with a view to—
  - (a) explaining provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the Director expects such provisions to operate.

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- (4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the Director may take into account in considering whether, and if so how, to exercise a power conferred on him by Chapter I, II or III.
- (5) Any advice or information published by the Director under this section is to be published in such form and in such manner as he considers appropriate.
- (6) If the Director is preparing any advice or information under this section he must consult such persons as he considers appropriate.
- (7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—
  - (a) the Director;
  - (b) the other regulators; and
  - (c) such other persons as he considers appropriate.

VALID FROM 11/01/1999

### **53 Fees.**

- (1) The Director may charge fees, of specified amounts, in connection with the exercise by him of specified functions under this Part.
- (2) Rules may, in particular, provide—
  - (a) for the amount of any fee to be calculated by reference to matters which may include—
    - (i) the turnover of any party to an agreement (determined in such manner as may be specified);
    - (ii) the turnover of a person whose conduct the Director is to consider (determined in that way);
  - (b) for different amounts to be specified in connection with different functions;
  - (c) for the repayment by the Director of the whole or part of a fee in specified circumstances;
  - (d) that an application or notice is not to be regarded as duly made or given unless the appropriate fee is paid.
- (3) In this section—
  - (a) “rules” means rules made by the Director under section 51; and
  - (b) “specified” means specified in rules.

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## Regulators

### 54 Regulators.

- (1) In this Part “regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10.
- (2) Parts II and III of Schedule 10 provide for functions of the Director under this Part to be exercisable concurrently by regulators.
- (3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators’ competition functions.
- (4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part (“Part I functions”) which are exercisable concurrently by two or more competent persons as a result of any provision made by Part II or III of Schedule 10.
- (5) The regulations may, in particular, make provision—
  - (a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;
  - (b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;
  - (c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;
  - (d) for Part I functions in a particular case to be exercised jointly—
    - (i) by the Director and one or more regulators, or
    - (ii) by two or more regulators,and as to the procedure to be followed in such cases;
  - (e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;
  - (f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;
  - (g) for the person (“A”) exercising Part I functions in a particular case—
    - (i) to appoint another competent person (“B”) to exercise Part I functions on A’s behalf in relation to the case; or
    - (ii) to appoint officers of B (with B’s consent) to act as officers of A in relation to the case;
  - (h) for notification as to who is exercising Part I functions in respect of a particular case.
- (6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State or by such other person as may be prescribed.
- (7) “Competent person” means the Director or any of the regulators.

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### Commencement Information

- 16** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 76(3); s. 54(2) in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; s. 54(3) in force for certain purposes at 11.1.1999 and s. 54(4)-(7) in force at the same date by S.I. 1998/3166, art. 2, Sch.; s. 54(3) in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; s. 54 (1)(2) and (3) wholly in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

VALID FROM 11/01/1999

### *Confidentiality and immunity from defamation*

#### **55 General restrictions on disclosure of information.**

- (1) No information which—
- (a) has been obtained under or as a result of any provision of this Part, and
  - (b) relates to the affairs of any individual or to any particular business of an undertaking,
- is to be disclosed during the lifetime of that individual or while that business continues to be carried on, unless the condition mentioned in subsection (2) is satisfied.
- (2) The condition is that consent to the disclosure has been obtained from—
- (a) the person from whom the information was initially obtained under or as a result of any provision of this Part (if the identity of that person is known); and
  - (b) if different—
    - (i) the individual to whose affairs the information relates, or
    - (ii) the person for the time being carrying on the business to which the information relates.
- (3) Subsection (1) does not apply to a disclosure of information—
- (a) made for the purpose of—
    - (i) facilitating the performance of any relevant functions of a designated person;
    - (ii) facilitating the performance of any functions of the Commission in respect of Community law about competition;
    - (iii) facilitating the performance by the Comptroller and Auditor General of any of his functions;
    - (iv) criminal proceedings in any part of the United Kingdom;
  - (b) made with a view to the institution of, or otherwise for the purposes of, civil proceedings brought under or in connection with this Part;
  - (c) made in connection with the investigation of any criminal offence triable in the United Kingdom or in any part of the United Kingdom; or
  - (d) which is required to meet a Community obligation.
- (4) In subsection (3) “relevant functions” and “designated person” have the meaning given in Schedule 11.

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- (5) Subsection (1) also does not apply to a disclosure of information made for the purpose of facilitating the performance of specified functions of any specified person.
- (6) In subsection (5) “specified” means specified in an order made by the Secretary of State.
- (7) If information is disclosed to the public in circumstances in which the disclosure does not contravene subsection (1), that subsection does not prevent its further disclosure by any person.
- (8) A person who contravenes this section is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Commencement Information

- 17** S. 55 wholly in force; s. 55 not in force at Royal Assent see s. 76(3); s. 55(6) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, Sch.; s. 55(1)-(5), (7) and (8) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

VALID FROM 01/03/2000

#### **56 Director and Secretary of State to have regard to certain matters in relation to the disclosure of information.**

- (1) This section applies if the Secretary of State or the Director is considering whether to disclose any information acquired by him under, or as a result of, any provision of this Part.
- (2) He must have regard to the need for excluding, so far as is practicable, information the disclosure of which would in his opinion be contrary to the public interest.
- (3) He must also have regard to—
  - (a) the need for excluding, so far as is practicable—
    - (i) commercial information the disclosure of which would, or might, in his opinion, significantly harm the legitimate business interests of the undertaking to which it relates, or
    - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in his opinion, significantly harm his interests; and
  - (b) the extent to which the disclosure is necessary for the purposes for which the Secretary of State or the Director is proposing to make the disclosure.

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

- C22** S. 56 applied (with modifications) (1.3.2000) by [S.I. 2000/261](#), [Rule 14\(8\)](#)

**Status:** Point in time view as at 09/11/1998. This version of this Act contains provisions that are not valid for this point in time.

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## 57 Defamation.

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the Director in the exercise of any of his functions under this Part.

VALID FROM 01/03/2000

### *Findings of fact by Director*

## 58 Findings of fact by Director.

- (1) Unless the court directs otherwise or the Director has decided to take further action in accordance with section 16(2) or 24(2), a Director’s finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—
- (a) the time for bringing an appeal in respect of the finding has expired and the relevant party has not brought such an appeal; or
  - (b) the decision of an appeal tribunal on such an appeal has confirmed the finding.
- (2) In this section—
- “a Director’s finding” means a finding of fact made by the Director in the course of—
- (a) determining an application for a decision under section 14 or 22, or
  - (b) conducting an investigation under section 25;
- “Part I proceedings” means proceedings—
- (a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; but
  - (b) which are brought otherwise than by the Director;
- “relevant party” means—
- (a) in relation to the Chapter I prohibition, a party to the agreement which is alleged to have infringed the prohibition; and
  - (b) in relation to the Chapter II prohibition, the undertaking whose conduct is alleged to have infringed the prohibition.
- (3) Rules of court may make provision in respect of assistance to be given by the Director to the court in Part I proceedings.

### *Interpretation and governing principles*

## 59 Interpretation.

- (1) In this Part—
- “appeal tribunal” means an appeal tribunal established in accordance with the provisions of Part III of Schedule 7 for the purpose of hearing an appeal under section 46 or 47;
- “Article 85” means Article 85 of the Treaty;
- “Article 86” means Article 86 of the Treaty;

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“block exemption” has the meaning given in section 6(4);  
“block exemption order” has the meaning given in section 6(2);  
“the Chapter I prohibition” has the meaning given in section 2(8);  
“the Chapter II prohibition” has the meaning given in section 18(4);  
“the Commission” (except in relation to the Competition Commission) means the European Commission;  
“the Council” means the Council of the European Union;  
“the court”, except in sections 58 and 60 and the expression “European Court”, means—  
(a) in England and Wales, the High Court;  
(b) in Scotland, the Court of Session; and  
(c) in Northern Ireland, the High Court;  
“the Director” means the Director General of Fair Trading;  
“document” includes information recorded in any form;  
“the EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;  
“the European Court” means the Court of Justice of the European Communities and includes the Court of First Instance;  
“individual exemption” has the meaning given in section 4(2);  
“information” includes estimates and forecasts;  
“investigating officer” has the meaning given in section 27(1);  
“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;  
“officer”, in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;  
“parallel exemption” has the meaning given in section 10(3);  
“person”, in addition to the meaning given by the <sup>M4</sup>Interpretation Act 1978, includes any undertaking;  
“premises” does not include domestic premises unless—  
(a) they are also used in connection with the affairs of an undertaking, or  
(b) documents relating to the affairs of an undertaking are kept there,  
but does include any vehicle;  
“prescribed” means prescribed by regulations made by the Secretary of State;  
“regulator” has the meaning given by section 54;  
“section 11 exemption” has the meaning given in section 11(3); and  
“the Treaty” means the treaty establishing the European Community.

- (2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.
- (3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

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- (4) Any power conferred on the Director by this Part to require information includes power to require any document which he believes may contain that information.

#### Commencement Information

**I8** S. 59 wholly in force at 11.1.1999; s. 59 not in force at Royal Assent see s. 76(3); s. 59 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; s. 59 in force in so far as not already in force by S.I. 1998/3166, art. 2, Sch.

#### Marginal Citations

**M3** 1975 c. 26.

**M4** 1978 c. 30.

VALID FROM 11/01/1999

### 60 Principles to be applied in determining questions.

- (1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community.
- (2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—
- (a) the principles applied, and decision reached, by the court in determining that question; and
  - (b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in Community law.
- (3) The court must, in addition, have regard to any relevant decision or statement of the Commission.
- (4) Subsections (2) and (3) also apply to—
- (a) the Director; and
  - (b) any person acting on behalf of the Director, in connection with any matter arising under this Part.
- (5) In subsections (2) and (3), “court” means any court or tribunal.
- (6) In subsections (2)(b) and (3), “decision” includes a decision as to—
- (a) the interpretation of any provision of Community law;
  - (b) the civil liability of an undertaking for harm caused by its infringement of Community law.



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

- C23** S. 60 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9A(11) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 204(2), 279)

VALID FROM 01/03/2000

**PART II**

INVESTIGATIONS IN RELATION TO ARTICLES 85 AND 86

**61 Introduction.**

(1) In this Part—

“Article 85” and “Article 86” have the same meaning as in Part I;

“authorised officer”, in relation to the Director, means an officer to whom an authorisation has been given under subsection (2);

“the Commission” means the European Commission;

“the Director” means the Director General of Fair Trading;

“Commission investigation” means an investigation ordered by a decision of the Commission under a prescribed provision of Community law relating to Article 85 or 86;

“Director’s investigation” means an investigation conducted by the Director at the request of the Commission under a prescribed provision of Community law relating to Article 85 or 86;

“Director’s special investigation” means a Director’s investigation conducted at the request of the Commission in connection with a Commission investigation;

“prescribed” means prescribed by order made by the Secretary of State;

“premises” means—

(a) in relation to a Commission investigation, any premises, land or means of transport which an official of the Commission has power to enter in the course of the investigation; and

(b) in relation to a Director’s investigation, any premises, land or means of transport which an official of the Commission would have power to enter if the investigation were being conducted by the Commission.

(2) For the purposes of a Director’s investigation, an officer of the Director to whom an authorisation has been given has the powers of an official authorised by the Commission in connection with a Commission investigation under the relevant provision.

(3) “Authorisation” means an authorisation given in writing by the Director which—

(a) identifies the officer;

(b) specifies the subject matter and purpose of the investigation; and

(c) draws attention to any penalties which a person may incur in connection with the investigation under the relevant provision of Community law.

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## **62 Power to enter premises: Commission investigations.**

- (1) A judge of the High Court may issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the Director, that a Commission investigation is being, or is likely to be, obstructed.
- (2) A Commission investigation is being obstructed if—
  - (a) an official of the Commission (“the Commission official”), exercising his power in accordance with the provision under which the investigation is being conducted, has attempted to enter premises but has been unable to do so; and
  - (b) there are reasonable grounds for suspecting that there are books or records on the premises which the Commission official has power to examine.
- (3) A Commission investigation is also being obstructed if there are reasonable grounds for suspecting that there are books or records on the premises—
  - (a) the production of which has been required by an official of the Commission exercising his power in accordance with the provision under which the investigation is being conducted; and
  - (b) which have not been produced as required.
- (4) A Commission investigation is likely to be obstructed if—
  - (a) an official of the Commission (“the Commission official”) is authorised for the purpose of the investigation;
  - (b) there are reasonable grounds for suspecting that there are books or records on the premises which the Commission official has power to examine; and
  - (c) there are also reasonable grounds for suspecting that, if the Commission official attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise—
  - (a) a named officer of the Director,
  - (b) any other of his officers whom he has authorised in writing to accompany the named officer, and
  - (c) any official of the Commission authorised for the purpose of the Commission investigation,  
to enter the premises specified in the warrant, and search for books and records which the official has power to examine, using such force as is reasonably necessary for the purpose.
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (7) On leaving any premises entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

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### **63 Power to enter premises: Director's special investigations.**

- (1) A judge of the High Court may issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the Director, that a Director's special investigation is being, or is likely to be, obstructed.
- (2) A Director's special investigation is being obstructed if—
  - (a) an authorised officer of the Director has attempted to enter premises but has been unable to do so;
  - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, concerned; and
  - (c) there are reasonable grounds for suspecting that there are books or records on the premises which the officer has power to examine.
- (3) A Director's special investigation is also being obstructed if—
  - (a) there are reasonable grounds for suspecting that there are books or records on the premises which an authorised officer of the Director has power to examine;
  - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, and has required production of the books or records; and
  - (c) the books and records have not been produced as required.
- (4) A Director's special investigation is likely to be obstructed if—
  - (a) there are reasonable grounds for suspecting that there are books or records on the premises which an authorised officer of the Director has power to examine; and
  - (b) there are also reasonable grounds for suspecting that, if the officer attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise—
  - (a) a named authorised officer of the Director,
  - (b) any other authorised officer accompanying the named officer, and
  - (c) any named official of the Commission,to enter the premises specified in the warrant, and search for books and records which the authorised officer has power to examine, using such force as is reasonably necessary for the purpose.
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (7) On leaving any premises which he has entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

### **64 Entry of premises under sections 62 and 63: supplementary.**

- (1) A warrant issued under section 62 or 63 must indicate—

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- (a) the subject matter and purpose of the investigation;
  - (b) the nature of the offence created by section 65.
- (2) The powers conferred by section 62 or 63 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
  - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
- “named officer” means the officer named in the warrant; and
  - “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

## **65 Offences.**

- (1) A person is guilty of an offence if he intentionally obstructs any person in the exercise of his powers under a warrant issued under section 62 or 63.
- (2) A person guilty of an offence under subsection (1) is 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.

VALID FROM 11/01/1999

## **PART III**

### **MONOPOLIES**

VALID FROM 01/04/1999

## **66 Monopoly investigations: general.**

- (1) Section 44 of the <sup>M5</sup>Fair Trading Act 1973 (power of the Director to require information about monopoly situations) is amended as follows.
- (2) In subsection (1), for the words after paragraph (b) substitute— “ the Director may exercise the powers conferred by subsection (2) below for the purpose of assisting him in determining whether to take either of the following decisions with regard to that situation. ”
- (3) After subsection (1) insert—

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“(1A) Those decisions are—

- (a) whether to make a monopoly reference with respect to the existence or possible existence of the situation;
- (b) whether, instead, to make a proposal under section 56A below for the Secretary of State to accept undertakings.”

(4) For subsection (2) substitute—

“(2) In the circumstances and for the purpose mentioned in subsection (1) above, the Director may—

- (a) require any person within subsection (3) below to produce to the Director, at a specified time and place—
  - (i) any specified documents, or
  - (ii) any document which falls within a specified category, which are in his custody or under his control and which are relevant;
- (b) require any person within subsection (3) below who is carrying on a business to give the Director specified estimates, forecasts, returns, or other information, and specify the time at which and the form and manner in which the estimates, forecasts, returns or information are to be given;
- (c) enter any premises used by a person within subsection (3) below for business purposes, and—
  - (i) require any person on the premises to produce any documents on the premises which are in his custody or under his control and which are relevant;
  - (ii) require any person on the premises to give the Director such explanation of the documents as he may require.

(3) A person is within this subsection if—

- (a) he produces goods of the description in question in the United Kingdom;
- (b) he supplies goods or (as the case may be) services of the description in question in the United Kingdom; or
- (c) such goods (or services) are supplied to him in the United Kingdom.

(4) The power to impose a requirement under subsection (2)(a) or (b) above is to be exercised by notice in writing served on the person on whom the requirement is imposed; and “specified” in those provisions means specified or otherwise described in the notice, and “specify” is to be read accordingly.

(5) The power under subsection (2)(a) above to require a person (“the person notified”) to produce a document includes power—

- (a) if the document is produced—
  - (i) to take copies of it or extracts from it;
  - (ii) to require the person notified, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;

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- (b) if the document is not produced, to require the person notified to state, to the best of his knowledge and belief, where it is.
- (6) Nothing in this section confers power to compel any person—
- (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session; or
- (b) in complying with any requirement for the giving of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (7) No person has to comply with a requirement imposed under subsection (2) above by a person acting under an authorisation under paragraph 7 of Schedule 1 to this Act unless evidence of the authorisation has, if required, been produced.
- (8) For the purposes of subsection (2) above—
- (a) a document is relevant if—
- (i) it is relevant to a decision mentioned in subsection (1A) above; and
- (ii) the powers conferred by this section are exercised in relation to the document for the purpose of assisting the Director in determining whether to take that decision;
- (b) “document” includes information recorded in any form; and
- (c) in relation to information recorded otherwise than in legible form, the power to require its production includes power to require production of it in legible form, so far as the means to do so are within the custody or under the control of the person on whom the requirement is imposed.”
- (5) The amendments made by this section and section 67 have effect in relation to sectoral regulators in accordance with paragraph 1 of Schedule 10.

#### Marginal Citations

M5 1973 c. 41.

VALID FROM 01/04/1999

#### 67 Offences.

- (1) Section 46 of the <sup>M6</sup>Fair Trading Act 1973 is amended as follows.
- (2) Omit subsections (1) and (2).
- (3) At the end insert—
- “(4) Any person who refuses or wilfully neglects to comply with a requirement imposed under section 44(2) above is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the prescribed sum, or

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) If a person is charged with an offence under subsection (4) in respect of a requirement to produce a document, it is a defence for him to prove—
  - (a) that the document was not in his possession or under his control; and
  - (b) that it was not reasonably practicable for him to comply with the requirement.
- (6) If a person is charged with an offence under subsection (4) in respect of a requirement—
  - (a) to provide an explanation of a document, or
  - (b) to state where a document is to be found,it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (7) A person who intentionally obstructs the Director in the exercise of his powers under section 44 is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the prescribed sum;
  - (b) on conviction on indictment, to a fine.
- (8) A person who wilfully alters, suppresses or destroys any document which he has been required to produce under section 44(2) is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the prescribed sum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”

#### Marginal Citations

M6 1973 c. 41.

VALID FROM 01/04/1999

#### 68 Services relating to use of land.

In section 137 of the Fair Trading Act 1973, after subsection (3) insert—

“(3A) The Secretary of State may by order made by statutory instrument—

- (a) provide that “the supply of services” in the provisions of this Act is to include, or to cease to include, any activity specified in the order which consists in, or in making arrangements in connection with, permitting the use of land; and
- (b) for that purpose, amend or repeal any of paragraphs (c), (d), (e) or (g) of subsection (3) above.

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(3B) No order under subsection (3A) above is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3C) The provisions of Schedule 9 to this Act apply in the case of a draft of any such order as they apply in the case of a draft of an order to which section 91(1) above applies.”

#### 69 Reports: monopoly references.

In section 83 of the <sup>M7</sup>Fair Trading Act 1973—

- (a) in subsection (1), omit “Subject to subsection (1A) below”; and
- (b) omit subsection (1A) (reports on monopoly references to be transmitted to certain persons at least twenty-four hours before laying before Parliament).

#### Marginal Citations

M7 1973 c. 41.

## PART IV

### SUPPLEMENTAL AND TRANSITIONAL

VALID FROM 01/03/2000

#### 70 Contracts as to patented products etc.

Sections 44 and 45 of the <sup>M8</sup>Patents Act 1977 shall cease to have effect.

#### Marginal Citations

M8 1977 c. 37.

#### 71 Regulations, orders and rules.

- (1) Any power to make regulations or orders which is conferred by this Act is exercisable by statutory instrument.
- (2) The power to make rules which is conferred by section 48 is exercisable by statutory instrument.
- (3) Any statutory instrument made under this Act may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases.
- (4) No order is to be made under—



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- (a) section 3,
- (b) section 19,
- (c) section 36(8),
- (d) section 50, or
- (e) paragraph 6(3) of Schedule 4,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

- (5) Any statutory instrument made under this Act, apart from one made—
- (a) under any of the provisions mentioned in subsection (4), or
  - (b) under section 76(3),

shall be subject to annulment by a resolution of either House of Parliament.

VALID FROM 01/03/2000

## **72 Offences by bodies corporate etc.**

- (1) This section applies to an offence under any of sections 42 to 44, 55(8) or 65.
- (2) If an offence committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (4) If the affairs of a body corporate are managed by its members, subsection (2) 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.
- (5) If an offence committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on his part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5) “partner” includes a person purporting to act as a partner.

VALID FROM 01/03/2000

## **73 Crown application.**

- (1) Any provision made by or under this Act binds the Crown except that—
- (a) the Crown is not criminally liable as a result of any such provision;
  - (b) the Crown is not liable for any penalty under any such provision; and

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- (c) nothing in this Act affects Her Majesty in her private capacity.
- (2) Subsection (1)(a) does not affect the application of any provision of this Act in relation to persons in the public service of the Crown.
- (3) Subsection (1)(c) is to be interpreted as if section 38(3) of the <sup>M9</sup>Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.
- (4) If, in respect of a suspected infringement of the Chapter I prohibition or of the Chapter II prohibition otherwise than by the Crown or a person in the public service of the Crown, an investigation is conducted under section 25—
- (a) the power conferred by section 27 may not be exercised in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, without the written consent of the appropriate person; and
- (b) section 28 does not apply in relation to land so occupied.
- (5) In any case in which consent is required under subsection (4), the person who is the appropriate person in relation to that case is to be determined in accordance with regulations made by the Secretary of State.
- (6) Sections 62 and 63 do not apply in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, unless the matter being investigated is a suspected infringement by the Crown or by a person in the public service of the Crown.
- (7) In subsection (6) “infringement” means an infringement of Community law relating to Article 85 or 86 of the Treaty establishing the European Community.
- (8) If the Secretary of State certifies that it appears to him to be in the interests of national security that the powers of entry—
- (a) conferred by section 27, or
- (b) that may be conferred by a warrant under section 28, 62 or 63,
- should not be exercisable in relation to premises held or used by or on behalf of the Crown and which are specified in the certificate, those powers are not exercisable in relation to those premises.
- (9) Any amendment, repeal or revocation made by this Act binds the Crown to the extent that the enactment amended, repealed or revoked binds the Crown.

#### Marginal Citations

**M9** 1947 c. 44.

VALID FROM 11/01/1999

#### 74 Amendments, transitional provisions, savings and repeals.

- (1) The minor and consequential amendments set out in Schedule 12 are to have effect.
- (2) The transitional provisions and savings set out in Schedule 13 are to have effect.

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(3) The enactments set out in Schedule 14 are repealed.

#### Commencement Information

**19** S. 74 partly in force; s. 74 not in force at Royal Assent see s. 76(3); s. 74 in force for certain purposes at 1.11.1999 by S.I. 1998/3166, art. 2, Sch.; s. 74(1)(3) in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; s. 74 in force for certain purposes at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### 75 Consequential and supplementary provision.

- (1) The Secretary of State may by order make such incidental, consequential, transitional or supplemental provision as he thinks necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) An order under subsection (1) may, in particular, make provision—
  - (a) for enabling any person by whom any powers will become exercisable, on a date specified by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
  - (b) for making savings, or additional savings, from the effect of any repeal made by or under this Act.
- (3) Amendments made under this section shall be in addition, and without prejudice, to those made by or under any other provision of this Act.
- (4) No other provision of this Act restricts the powers conferred by this section.

#### 76 Short title, commencement and extent.

- (1) This Act may be cited as the Competition Act 1998.
- (2) Sections 71 and 75 and this section and paragraphs 1 to 7 and 35 of Schedule 13 come into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (4) This Act extends to Northern Ireland.

#### Subordinate Legislation Made

- P1** S. 76 power partly exercised (9.11.1998): 26.11.1998 appointed for specified provisions by S.I. 1998/2750, art. 2
- P2** S. 76 power partly exercised (16.12.1998): 11.1.1999 appointed for specified provisions by S.I. 1998/3166, art. 2, Sch.
- P3** S. 76 power partly exercised (2.3.1999): 1.4.1999 appointed for specified provisions by S.I. 1999/505, art. 2, Sch. 2
- P4** S. 76 power partly exercised (19.10.1999): 10.11.1999 appointed for specified provisions by S.I. 1999/2859, art. 2

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## SCHEDULES

VALID FROM 11/01/1999

SCHEDULE 1 Sections 3(1)(a) and 19(1)(a).

EXCLUSIONS: MERGERS AND CONCENTRATIONS

.....

VALID FROM 11/01/1999

SCHEDULE 2 Section 3(1)(b).

EXCLUSIONS: OTHER COMPETITION SCRUTINY

.....

VALID FROM 11/01/1999

SCHEDULE 3 Sections 3(1)(c) and 19(1)(b).

GENERAL EXCLUSIONS

.....

VALID FROM 11/01/1999

SCHEDULE 4 Section 3(1)(d).

PROFESSIONAL RULES

.....

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## SCHEDULE 5

Section 12(2).

### NOTIFICATION UNDER CHAPTER I: PROCEDURE

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

**C25** Sch. 5 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 8

#### Commencement Information

**I10** Sch. 5 partly in force; Sch. 5 not in force at Royal Assent, see s. 431; Sch. 5 partly in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

VALID FROM 01/03/2000

#### *Terms used*

- 1 In this Schedule—
- “applicant” means the person making an application to which this Schedule applies;
  - “application” means an application under section 13 or an application under section 14;
  - “application for guidance” means an application under section 13;
  - “application for a decision” means an application under section 14;
  - “rules” means rules made by the Director under section 51; and
  - “specified” means specified in the rules.

VALID FROM 01/03/2000

#### *General rules about applications*

- 2
- (1) An application must be made in accordance with rules.
  - (2) A party to an agreement who makes an application must take all reasonable steps to notify all other parties to the agreement of whom he is aware—
    - (a) that the application has been made; and
    - (b) as to whether it is for guidance or a decision.
  - (3) Notification under sub-paragraph (2) must be in the specified manner.

VALID FROM 01/03/2000

#### *Preliminary investigation*

- 3
- (1) If, after a preliminary investigation of an application, the Director considers that it is likely—
    - (a) that the agreement concerned will infringe the Chapter I prohibition, and

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(b) that it would not be appropriate to grant the agreement an individual exemption,  
 he may make a decision (“a provisional decision”) under this paragraph.

(2) If the Director makes a provisional decision—

- (a) the Director must notify the applicant in writing of his provisional decision;  
 and
- (b) section 13(4) or (as the case may be) section 14(4) is to be taken as never having applied.

(3) When making a provisional decision, the Director must follow such procedure as may be specified.

(4) A provisional decision does not affect the final determination of an application.

(5) If the Director has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 14.

VALID FROM 01/03/2000

*Procedure on application for guidance*

4 When determining an application for guidance, the Director must follow such procedure as may be specified.

VALID FROM 01/03/2000

*Procedure on application for a decision*

5 (1) When determining an application for a decision, the Director must follow such procedure as may be specified.

(2) The Director must arrange for the application to be published in such a way as he thinks most suitable for bringing it to the attention of those likely to be affected by it, unless he is satisfied that it will be sufficient for him to seek information from one or more particular persons other than the applicant.

(3) In determining the application, the Director must take into account any representations made to him by persons other than the applicant.

VALID FROM 01/03/2000

*Publication of decisions*

6 If the Director determines an application for a decision he must publish his decision, together with his reasons for making it, in such manner as may be specified.

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PROSPECTIVE

*[ Delay by the [OFT]*

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the [OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the [OFT] in determining the application.
- (2) The court may give such directions to the [OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.]

VALID FROM 01/03/2000

SCHEDULE 6

Section 20(2).

NOTIFICATION UNDER CHAPTER II: PROCEDURE

.....

VALID FROM 01/04/1999

SCHEDULE 7

Section 45(7).

THE COMPETITION COMMISSION

.....

VALID FROM 01/04/1999

SCHEDULE 8

Sections 46(5) and 48(4).

APPEALS

.....

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VALID FROM 26/11/1998

SCHEDULE 9 Section 51(2).

DIRECTOR’S RULES

.....

VALID FROM 26/11/1998

SCHEDULE 10 Sections 54 and 66(5).

REGULATORS

.....

VALID FROM 01/03/2000

SCHEDULE 11 Section 55(4).

INTERPRETATION OF SECTION 55

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VALID FROM 11/01/1999

SCHEDULE 12 Section 74(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

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## SCHEDULE 13

Section 74(2).

### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

##### GENERAL

##### *Interpretation*

1 (1) In this Schedule—

- “RPA” means the <sup>M105</sup>Resale Prices Act 1976;
  - “RTPA” means the Restrictive Trade Practices Act 1976;
  - “continuing proceedings” has the meaning given by paragraph 15;
  - “the Court” means the Restrictive Practices Court;
  - “Director” means the Director General of Fair Trading;
  - “document” includes information recorded in any form;
  - “enactment date” means the date on which this Act is passed;
  - “information” includes estimates and forecasts;
  - “interim period” means the period beginning on the enactment date and ending immediately before the starting date;
  - “prescribed” means prescribed by an order made by the Secretary of State;
  - “regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10;
  - “starting date” means the date on which section 2 comes into force;
  - “transitional period” means the transitional period provided for in Chapters III and IV of Part IV of this Schedule.
- (2) Sections 30, 44, 51, 53, 55, 56, 57 and 59(3) and (4) and paragraph 12 of Schedule 9 (“the applied provisions”) apply for the purposes of this Schedule as they apply for the purposes of Part I of this Act.
- (3) Section 2(5) applies for the purposes of any provisions of this Schedule which are concerned with the operation of the Chapter I prohibition as it applies for the purposes of Part I of this Act.
- (4) In relation to any of the matters in respect of which a regulator may exercise powers as a result of paragraph 35(1), the applied provisions are to have effect as if references to the Director included references to the regulator.
- (5) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because a transitional period is provided by virtue of this Schedule, does not require those provisions of the agreement in respect of which there is a transitional period to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

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### Marginal Citations

M105 1976 c. 53.

#### *General power to make transitional provision and savings*

- 2 (1) Nothing in this Schedule affects the power of the Secretary of State under section 75 to make transitional provisions or savings.
- (2) An order under that section may modify any provision made by this Schedule.

#### *Advice and information*

- 3 (1) The Director may publish advice and information explaining provisions of this Schedule to persons who are likely to be affected by them.
- (2) Any advice or information published by the Director under this paragraph is to be published in such form and manner as he considers appropriate.

## PART II

### DURING THE INTERIM PERIOD

#### *Block exemptions*

- 4 (1) The Secretary of State may, at any time during the interim period, make one or more orders for the purpose of providing block exemptions which are effective on the starting date.
- (2) An order under this paragraph has effect as if properly made under section 6.

#### *Certain agreements to be non-notifiable agreements*

- 5 An agreement which—
- (a) is made during the interim period, and
  - (b) satisfies the conditions set out in paragraphs (a), (c) and (d) of section 27A(1) of the RTPA,
- is to be treated as a non-notifiable agreement for the purposes of the RTPA.

#### *Application of RTPA during the interim period*

- 6 In relation to agreements made during the interim period—
- (a) the Director is no longer under the duty to take proceedings imposed by section 1(2)(c) of the RTPA but may continue to do so;
  - (b) section 21 of that Act has effect as if subsections (1) and (2) were omitted; and
  - (c) section 35(1) of that Act has effect as if the words “or within such further time as the Director may, upon application made within that time, allow” were omitted.

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### Guidance

- 7
- (1) Sub-paragraphs (2) to (4) apply in relation to agreements made during the interim period.
  - (2) An application may be made to the Director in anticipation of the coming into force of section 13 in accordance with directions given by the Director and such an application is to have effect on and after the starting date as if properly made under section 13.
  - (3) The Director may, in response to such an application—
    - (a) give guidance in anticipation of the coming into force of section 2; or
    - (b) on and after the starting date, give guidance under section 15 as if the application had been properly made under section 13.
  - (4) Any guidance so given is to have effect on and after the starting date as if properly given under section 15.

VALID FROM 01/03/2000

### PART III

#### ON THE STARTING DATE

#### *Applications which fall*

- 8
- (1) Proceedings in respect of an application which is made to the Court under any of the provisions mentioned in sub-paragraph (2), but which is not determined before the starting date, cease on that date.
  - (2) The provisions are—
    - (a) sections 2(2), 35(3), 37(1) and 40(1) of the RTPA and paragraph 5 of Schedule 4 to that Act;
    - (b) section 4(1) of the RTPA so far as the application relates to an order under section 2(2) of that Act; and
    - (c) section 25(2) of the RPA.
  - (3) The power of the Court to make an order for costs in relation to any proceedings is not affected by anything in this paragraph or by the repeals made by section 1.

#### *Orders and approvals which fall*

- 9
- (1) An order in force immediately before the starting date under—
    - (a) section 2(2), 29(1), 30(1), 33(4), 35(3) or 37(1) of the RTPA; or
    - (b) section 25(2) of the RPA,ceases to have effect on that date.
  - (2) An approval in force immediately before the starting date under section 32 of the RTPA ceases to have effect on that date.

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## PART IV

### ON AND AFTER THE STARTING DATE

VALID FROM 11/01/1999

## CHAPTER I

### GENERAL

#### *Duty of Director to maintain register etc.*

- 10 (1) This paragraph applies even though the relevant provisions of the RTPA are repealed by this Act.
- (2) The Director is to continue on and after the starting date to be under the duty imposed by section 1(2)(a) of the RTPA to maintain a register in respect of agreements—
- (a) particulars of which are, on the starting date, entered or filed on the register;
  - (b) which fall within sub-paragraph (4);
  - (c) which immediately before the starting date are the subject of proceedings under the RTPA which do not cease on that date by virtue of this Schedule; or
  - (d) in relation to which a court gives directions to the Director after the starting date in the course of proceedings in which a question arises as to whether an agreement was, before that date—
    - (i) one to which the RTPA applied;
    - (ii) subject to registration under that Act;
    - (iii) a non-notifiable agreement for the purposes of that Act.
- (3) The Director is to continue on and after the starting date to be under the duties imposed by section 1(2)(a) and (b) of the RTPA of compiling a register of agreements and entering or filing certain particulars in the register, but only in respect of agreements of a kind referred to in paragraph (b), (c) or (d) of sub-paragraph (2).
- (4) An agreement falls within this sub-paragraph if—
- (a) it is subject to registration under the RTPA but—
    - (i) is not a non-notifiable agreement within the meaning of section 27A of the RTPA, or
    - (ii) is not one to which paragraph 5 applies;
  - (b) particulars of the agreement have been provided to the Director before the starting date; and
  - (c) as at the starting date no entry or filing has been made in the register in respect of the agreement.
- (5) Sections 23 and 27 of the RTPA are to apply after the starting date in respect of the register subject to such modifications, if any, as may be prescribed.
- (6) In sub-paragraph (2)(d) “court” means—

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- (a) the High Court;
- (b) the Court of Appeal;
- (c) the Court of Session;
- (d) the High Court or Court of Appeal in Northern Ireland; or
- (e) the House of Lords.

#### Commencement Information

**I36** Sch. 13 para. 10 wholly in force; Sch. 13 para. 10 not in force at Royal Assent see s. 76(3); Sch. 13 para. 10(5) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch. Sch. 13 para. 10(1)-(4) and (6) fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### *RTPA section 3 applications*

- 11 (1) Even though section 3 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed—
- (a) in relation to a continuing application under that section; or
  - (b) so as to allow an application to be made under that section on or after the starting date in respect of a continuing application under section 1(3) of the RTPA.
- (2) “Continuing application” means an application made, but not determined, before the starting date.

#### Commencement Information

**I37** Sch. 13 para. 11 partly in force; Sch. 13 para. 11 not in force at Royal Assent see s. 76(3); Sch. 13 para. 11 in force for certain purposes at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.

#### *RTPA section 26 applications*

- 12 (1) Even though section 26 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed, in relation to an application which is made under that section, but not determined, before the starting date.
- (2) If an application under section 26 is determined on or after the starting date, this Schedule has effect in relation to the agreement concerned as if the application had been determined immediately before that date.

#### Commencement Information

**I38** Sch. 13 para. 12 wholly in force; Sch. 13 para. 12 not in force at Royal Assent see s. 76(3); Sch. 13 para. 12(1) in force for certain purposes at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 13 para. 12(1) and (2) fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

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VALID FROM 01/03/2000

*Right to bring civil proceedings*

- 13 (1) Even though section 35 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of section 27ZA or 35(2) of that Act to bring civil proceedings in respect of an agreement (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).
- (2) Even though section 25 of the RPA is repealed by this Act, the provisions of that section (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of subsection (3) of that section to bring civil proceedings (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

VALID FROM 01/03/2000

**CHAPTER II**

CONTINUING PROCEEDINGS

*The general rule*

- 14 (1) The Chapter I prohibition does not apply to an agreement at any time when the agreement is the subject of continuing proceedings under the RTPA.
- (2) The Chapter I prohibition does not apply to an agreement relating to goods which are the subject of continuing proceedings under section 16 or 17 of the RPA to the extent to which the agreement consists of exempt provisions.
- (3) In sub-paragraph (2) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
- (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.
- (4) If the Chapter I prohibition does not apply to an agreement because of this paragraph, the provisions of, or made under, the RTPA or the RPA are to continue to have effect in relation to the agreement.
- (5) The repeals made by section 1 do not affect—
- (a) continuing proceedings; or
  - (b) proceedings of the kind referred to in paragraph 11 or 12 of this Schedule which are continuing after the starting date.

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*Meaning of “continuing proceedings”*

- 15 (1) For the purposes of this Schedule “continuing proceedings” means proceedings in respect of an application made to the Court under the RTPA or the RPA, but not determined, before the starting date.
- (2) But proceedings under section 3 or 26 of the RTPA to which paragraph 11 or 12 applies are not continuing proceedings.
- (3) The question whether (for the purposes of Part III, or this Part, of this Schedule) an application has been determined is to be decided in accordance with sub-paragraphs (4) and (5).
- (4) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (5) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

*RTPA section 4 proceedings*

- 16 Proceedings on an application for an order under section 4 of the RTPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under that section is granted before the starting date but the application itself is not made before that date.

*RPA section 16 or 17 proceedings*

- 17 Proceedings on an application for an order under section 16 or 17 of the RPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under section 16 or 17 of the RPA is granted before the starting date, but the application itself is not made before that date.

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*Continuing proceedings which are discontinued*

- 18 (1) On an application made jointly to the Court by all the parties to any continuing proceedings, the Court must, if it is satisfied that the parties wish it to do so, discontinue the proceedings.
- (2) If, on an application under sub-paragraph (1) or for any other reason, the Court orders the proceedings to be discontinued, this Schedule has effect (subject to paragraphs 21 and 22) from the date on which the proceedings are discontinued as if they had never been instituted.

VALID FROM 11/01/1999

**CHAPTER III**

THE TRANSITIONAL PERIOD

*The general rule*

- 19 (1) Except where this Chapter or Chapter IV provides otherwise, there is a transitional period, beginning on the starting date and lasting for one year, for any agreement made before the starting date.
- (2) The Chapter I prohibition does not apply to an agreement to the extent to which there is a transitional period for the agreement.
- (3) The Secretary of State may by regulations provide for sections 13 to 16 and Schedule 5 to apply with such modifications (if any) as may be specified in the regulations, in respect of applications to the Director about agreements for which there is a transitional period.

**Commencement Information**

**I39** Sch. 13 para. 19 wholly in force; Sch. 13 para. 19 not in force at Royal Assent see s. 76(3); Sch. 13 para. 19(3) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 13 para. 19(1) and (2) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

VALID FROM 01/03/2000

*Cases for which there is no transitional period*

- 20 (1) There is no transitional period for an agreement to the extent to which, immediately before the starting date, it is—
- (a) void under section 2(1) or 35(1)(a) of the RTPA;
  - (b) the subject of an order under section 2(2) or 35(3) of the RTPA; or
  - (c) unlawful under section 1, 2 or 11 of the RPA or void under section 9 of that Act.



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- (2) There is no transitional period for an agreement to the extent to which, before the starting date, a person has acted unlawfully for the purposes of section 27ZA(2) or (3) of the RTPA in respect of the agreement.
- (3) There is no transitional period for an agreement to which paragraph 25(4) applies.
- (4) There is no transitional period for—
  - (a) an agreement in respect of which there are continuing proceedings, or
  - (b) an agreement relating to goods in respect of which there are continuing proceedings,to the extent to which the agreement is, when the proceedings are determined, void or unlawful.

VALID FROM 01/03/2000

*Continuing proceedings under the RTPA*

- 21 In the case of an agreement which is the subject of continuing proceedings under the RTPA, the transitional period begins—
- (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.

VALID FROM 01/03/2000

*Continuing proceedings under the RPA*

- 22 (1) In the case of an agreement relating to goods which are the subject of continuing proceedings under the RPA, the transitional period for the exempt provisions of the agreement begins—
- (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.
- (2) In sub-paragraph (1) “exempt provisions” has the meaning given by paragraph 14(3).

VALID FROM 01/03/2000

*Provisions not contrary to public interest*

- 23 (1) To the extent to which an agreement contains provisions which, immediately before the starting date, are provisions which the Court has found not to be contrary to the public interest, the transitional period lasts for five years.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) To the extent to which an agreement which on the starting date is the subject of continuing proceedings is, when the proceedings are determined, found by the

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Court not to be contrary to the public interest, the transitional period lasts for five years.

VALID FROM 01/03/2000

*Goods*

- 24 (1) In the case of an agreement relating to goods which, immediately before the starting date, are exempt under section 14 of the RPA, there is a transitional period for the agreement to the extent to which it consists of exempt provisions.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) In the case of an agreement relating to goods—
- (a) which on the starting date are the subject of continuing proceedings, and
  - (b) which, when the proceedings are determined, are found to be exempt under section 14 of the RPA,
- there is a transitional period for the agreement, to the extent to which it consists of exempt provisions.
- (4) In each case, the transitional period lasts for five years.
- (5) In sub-paragraphs (1) and (3) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
- (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.

VALID FROM 01/03/2000

*Transitional period for certain agreements*

- 25 (1) This paragraph applies to agreements—
- (a) which are subject to registration under the RTPA but which—
    - (i) are not non-notifiable agreements within the meaning of section 27A of the RTPA, or
    - (ii) are not agreements to which paragraph 5 applies; and
  - (b) in respect of which the time for furnishing relevant particulars as required by or under the RTPA expires on or after the starting date.
- (2) “Relevant particulars” means—
- (a) particulars which are required to be furnished by virtue of section 24 of the RTPA; or
  - (b) particulars of any variation of an agreement which are required to be furnished by virtue of sections 24 and 27 of the RTPA.
- (3) There is a transitional period of one year for an agreement to which this paragraph applies if—
- (a) relevant particulars are furnished before the starting date; and

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(b) no person has acted unlawfully (for the purposes of section 27ZA(2) or (3) of the RTPA) in respect of the agreement.

(4) If relevant particulars are not furnished by the starting date, section 35(1)(a) of the RTPA does not apply in relation to the agreement (unless sub-paragraph (5) applies).

(5) This sub-paragraph applies if a person falling within section 27ZA(2) or (3) of the RTPA has acted unlawfully for the purposes of those subsections in respect of the agreement.

VALID FROM 01/03/2000

*Special cases*

- 26 (1) In the case of an agreement in respect of which—
- (a) a direction under section 127(2) of the <sup>M106</sup>Financial Services Act 1986 (“the 1986 Act”) is in force immediately before the starting date, or
  - (b) a direction under section 194A(3) of the <sup>M107</sup>Broadcasting Act 1990 (“the 1990 Act”) is in force immediately before the starting date,
- the transitional period lasts for five years.
- (2) To the extent to which an agreement is the subject of a declaration—
- (a) made by the Treasury under section 127(3) of the 1986 Act, and
  - (b) in force immediately before the starting date,
- the transitional period lasts for five years.
- (3) Sub-paragraphs (1) and (2) do not affect the power of—
- (a) the Treasury to make a declaration under section 127(2) of the 1986 Act (as amended by Schedule 2 to this Act),
  - (b) the Secretary of State to make a declaration under section 194A of the 1990 Act (as amended by Schedule 2 to this Act),
- in respect of an agreement for which there is a transitional period.

**Marginal Citations**

**M106** 1986 c. 60.

**M107** 1990 c. 42.

*Status:* Point in time view as at 09/11/1998. This version of this Act contains provisions that are not valid for this point in time.

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## CHAPTER IV

### THE UTILITIES

VALID FROM 01/03/2000

#### *General*

- 27 In this Chapter “the relevant period” means the period beginning with the starting date and ending immediately before the fifth anniversary of that date.

VALID FROM 01/03/2000

#### *Electricity*

- 28 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of a section 100 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of a section 100 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 29—
- “section 100 order” means an order made under section 100 of the <sup>M108</sup>Electricity Act 1989; and
- expressions which are also used in Part I of the Electricity Act 1989 have the same meaning as in that Part.

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### Marginal Citations

M108 1989 c. 29.

VALID FROM 01/03/2000

#### *Electricity: power to make transitional orders*

- 29 (1) There is a transitional period for an agreement (whether made before or after the starting date) relating to the generation, transmission or supply of electricity which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date on which the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Electricity Supply and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.
- (7) In the application of this paragraph to Northern Ireland, the reference in subparagraph (5) to the Director General of Electricity Supply is to be read as a reference to the Director General of Electricity Supply for Northern Ireland.

VALID FROM 01/03/2000

#### *Gas*

- 30 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is

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made have applied by virtue of section 62 or a section 62 order, there is a transitional period—

- (a) beginning on the date on which the agreement is made; and
- (b) ending at the end of the relevant period.

(3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of section 62 or a section 62 order, there is a transitional period—

- (a) beginning on the date on which the variation is made; and
- (b) ending at the end of the relevant period.

(4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of section 62 or a section 62 order.

(5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of section 62 or a section 62 order, the transitional period ends on the date on which the agreement so ceases.

(6) Sub-paragraph (3) also applies in relation to a modification which is treated as an agreement made on or after 28th November 1985 by virtue of section 62(4).

(7) Sub-paragraph (3) is subject to paragraph 20.

(8) In this paragraph and paragraph 31—

“section 62” means section 62 of the <sup>M109</sup>Gas Act 1986;

“section 62 order” means an order made under section 62.

#### Marginal Citations

M109 1986 c. 44.

VALID FROM 01/03/2000

#### *Gas: power to make transitional orders*

31 (1) There is a transitional period for an agreement of a description falling within section 62(2)(a) and (b) or section 62(2A)(a) and (b) which—

- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
- (b) satisfies such conditions as may be specified in the order.

(2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.

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- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
  - (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Gas Supply and the Director.
- (6) The conditions specified in a transitional order may include—
  - (a) conditions which are to be satisfied in relation to a time before the coming into force of this paragraph;
  - (b) conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Secretary of State, the Director or the Director General of Gas Supply for determination after such consultation as may be so specified.

VALID FROM 01/03/2000

*Gas: Northern Ireland*

- 32
- (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of an Article 41 order, there is a transitional period—
    - (a) beginning on the starting date; and
    - (b) ending at the end of the relevant period.
  - (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of an Article 41 order, there is a transitional period—
    - (a) beginning on the date on which the agreement is made; and
    - (b) ending at the end of the relevant period.
  - (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of an Article 41 order, there is a transitional period—
    - (a) beginning on the date on which the variation is made; and
    - (b) ending at the end of the relevant period.
  - (4) If an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of an Article 41 order.
  - (5) But if an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of an Article 41 order, the transitional period ends on the date on which the agreement so ceases.

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(6) Sub-paragraph (3) is subject to paragraph 20.

(7) In this paragraph and paragraph 33—

“Article 41 order” means an order under Article 41 of the <sup>M110</sup>Gas (Northern Ireland) Order 1996;

“Department” means the Department of Economic Development.

**Marginal Citations**

**M110** S.I. 1996/275 (N.I. 2).

VALID FROM 01/03/2000

*Gas: Northern Ireland – power to make transitional orders*

- 33 (1) There is a transitional period for an agreement of a description falling within Article 41(1) which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Department (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Department must consult the Director General of Gas for Northern Ireland and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

VALID FROM 01/03/2000

*Railways*

34 (1) In this paragraph—

“section 131” means section 131 of the <sup>M111</sup>Railways Act 1993 (“the 1993 Act”);



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“section 131 agreement” means an agreement—

- (a) to which the RTPA does not apply immediately before the starting date by virtue of section 131(1); or
- (b) in respect of which a direction under section 131(3) is in force immediately before that date;

“non-exempt agreement” means an agreement relating to the provision of railway services (whether made before or after the starting date) which is not a section 131 agreement; and

“railway services” has the meaning given by section 82 of the 1993 Act.

- (2) For a section 131 agreement there is a transitional period of five years.
- (3) There is a transitional period for a non-exempt agreement to the extent to which the agreement is at any time before the end of the relevant period required or approved—
  - (a) by the Secretary of State or the Rail Regulator in pursuance of any function assigned or transferred to him under or by virtue of any provision of the 1993 Act;
  - (b) by or under any agreement the making of which is required or approved by the Secretary of State or the Rail Regulator in the exercise of any such function; or
  - (c) by or under a licence granted under Part I of the 1993 Act.
- (4) The transitional period conferred by sub-paragraph (3)—
  - (a) is to be taken to have begun on the starting date; and
  - (b) ends at the end of the relevant period.
- (5) Sub-paragraph (3) is subject to paragraph 20.
- (6) Any variation of a section 131 agreement on or after the starting date is to be treated, for the purposes of this paragraph, as a separate non-exempt agreement.

#### Marginal Citations

M111 1993 c. 43.

### *The regulators*

- 35 (1) Subject to sub-paragraph (3), each of the regulators may exercise, in respect of sectoral matters and concurrently with the Director, the functions of the Director under paragraph 3, 7, 19(3), 36, 37, 38 or 39.
- (2) In sub-paragraph (1) “sectoral matters” means—
  - (a) in the case of the Director General of Telecommunications, the matters referred to in section 50(3) of the <sup>M112</sup>Telecommunications Act 1984;
  - (b) in the case of the Director General of Gas Supply, the matters referred to in section 36A(3) and (4) of the <sup>M113</sup>Gas Act 1986;
  - (c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the <sup>M114</sup>Electricity Act 1989;

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- (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the <sup>M115</sup>Electricity (Northern Ireland) Order 1992;
  - (e) in the case of the Director General of Water Services, the matters referred to in section 31(3) of the <sup>M116</sup>Water Industry Act 1991;
  - (f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the <sup>M117</sup>Railways Act 1993;
  - (g) in the case of the Director General of Gas for Northern Ireland, the matters referred to in Article 23(3) of the <sup>M118</sup>Gas (Northern Ireland) Order 1996.
- (3) The power to give directions in paragraph 7(2) is exercisable by the Director only but if the Director is preparing directions which relate to a matter in respect of which a regulator exercises concurrent jurisdiction, he must consult that regulator.
- (4) Consultations conducted by the Director before the enactment date, with a view to preparing directions which have effect on or after that date, are to be taken to satisfy sub-paragraph (3).
- (5) References to enactments in sub-paragraph (2) are to the enactments as amended by or under this Act.

#### Marginal Citations

- M112** 1984 c. 12.
- M113** 1986 c. 44.
- M114** 1989 c. 29.
- M115** S.I. 1992/231 (N.I.1).
- M116** 1991 c. 56.
- M117** 1993 c. 43.
- M118** S.I. 1996/275 (N.I.2).

VALID FROM 01/03/2000

## CHAPTER V

### EXTENDING THE TRANSITIONAL PERIOD

- 36 (1) A party to an agreement for which there is a transitional period may apply to the Director, not less than three months before the end of the period, for the period to be extended.
- (2) The Director may (on his own initiative or on an application under sub-paragraph (1))—
- (a) extend a one-year transitional period by not more than twelve months;
  - (b) extend a transitional period of any period other than one year by not more than six months.
- (3) An application under sub-paragraph (1) must—
- (a) be in such form as may be specified; and
  - (b) include such documents and information as may be specified.

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- (4) If the Director extends the transitional period under this paragraph, he must give notice in such form, and to such persons, as may be specified.
- (5) The Director may not extend a transitional period more than once.
- (6) In this paragraph—
  - “person” has the same meaning as in Part I; and
  - “specified” means specified in rules made by the Director under section 51.

## CHAPTER VI

### TERMINATING THE TRANSITIONAL PERIOD

#### *General*

- 37 (1) Subject to sub-paragraph (2), the Director may by a direction in writing terminate the transitional period for an agreement, but only in accordance with paragraph 38.
- (2) The Director may not terminate the transitional period, nor exercise any of the powers in paragraph 38, in respect of an agreement which is excluded from the Chapter I prohibition by virtue of any of the provisions of Part I of this Act other than paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3.

VALID FROM 01/03/2000

#### *Circumstances in which the Director may terminate the transitional period*

- 38 (1) If the Director is considering whether to give a direction under paragraph 37 (“a direction”), he may in writing require any party to the agreement concerned to give him such information in connection with that agreement as he may require.
- (2) If at the end of such period as may be specified in rules made under section 51, a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (1), the Director may give a direction.
- (3) The Director may also give a direction if he considers—
  - (a) that the agreement would, but for the transitional period or a relevant exclusion, infringe the Chapter I prohibition; and
  - (b) that he would not be likely to grant the agreement an unconditional individual exemption.
- (4) For the purposes of sub-paragraph (3) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (5) In this paragraph—
  - “person” has the same meaning as in Part I;

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“relevant exclusion” means an exclusion under paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3.

VALID FROM 01/03/2000

*Procedural requirements on giving a paragraph 37 direction*

- 39 (1) The Director must specify in a direction under paragraph 37 (“a direction”) the date on which it is to have effect (which must not be less than 28 days after the direction is given).
- (2) Copies of the direction must be given to—
- (a) each of the parties concerned, and
  - (b) the Secretary of State,
- not less than 28 days before the date on which the direction is to have effect.
- (3) In relation to an agreement to which a direction applies, the transitional period (if it has not already ended) ends on the date specified in the direction unless, before that date, the direction is revoked by the Director or the Secretary of State.
- (4) If a direction is revoked, the Director may give a further direction in respect of the same agreement only if he is satisfied that there has been a material change of circumstance since the revocation.
- (5) If, as a result of paragraph 24(1) or (3), there is a transitional period in respect of provisions of an agreement relating to goods—
- (a) which immediately before the starting date are exempt under section 14 of the RPA, or
  - (b) which, when continuing proceedings are determined, are found to be exempt under section 14 of the RPA,
- the period is not affected by paragraph 37 or 38.

VALID FROM 10/11/1999

**PART V**

THE FAIR TRADING ACT 1973

*References to the Monopolies and Mergers Commission*

- 40 (1) If, on the date on which the repeal by this Act of a provision mentioned in sub-paragraph (2) comes into force, the Monopolies and Mergers Commission has not completed a reference which was made to it before that date, continued consideration of the reference may include consideration of a question which could not have been considered if the provision had not been repealed.
- (2) The provisions are—
- (a) sections 10(2), 54(5) and 78(3) and paragraph 3(1) and (2) of Schedule 8 to the Fair Trading Act 1973 (c. 41);

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- (b) section 11(8)(b) of the Competition Act 1980 (c. 21);
- (c) section 14(2) of the Telecommunications Act 1984 (c. 12);
- (d) section 45(3) of the Airports Act 1986 (c. 31);
- (e) section 25(2) of the Gas Act 1986 (c. 44);
- (f) section 13(2) of the Electricity Act 1989 (c. 29);
- (g) section 15(2) of the Water Industry Act 1991 (c. 56);
- (h) article 16(2) of the <sup>M119</sup>Electricity (Northern Ireland) Order 1992;
- (i) section 14(2) of the Railways Act 1993 (c. 43);
- (j) article 36(3) of the <sup>M120</sup>Airports (Northern Ireland) Order 1994;
- (k) article 16(2) of the <sup>M121</sup>Gas (Northern Ireland) Order 1996.

#### Marginal Citations

**M119** S.I. 1992/231 (N.I. 1).

**M120** S.I. 1994/426 (N.I. 1).

**M121** S.I. 1996/275 (N.I. 2).

#### Orders under Schedule 8

41 (1) In this paragraph—

“the 1973 Act” means the <sup>M122</sup>Fair Trading Act 1973;

“agreement” means an agreement entered into before the date on which the repeal of the limiting provisions comes into force;

“the order” means an order under section 56 or 73 of the 1973 Act;

“the limiting provisions” means sub-paragraph (1) or (2) of paragraph 3 of Schedule 8 to the 1973 Act (limit on power to make orders under paragraph 1 or 2 of that Schedule) and includes any provision of the order included because of either of those sub-paragraphs; and

“transitional period” means the period which—

(a) begins on the day on which the repeal of the limiting provisions comes into force; and

(b) ends on the first anniversary of the starting date.

(2) Sub-paragraph (3) applies to any agreement to the extent to which it would have been unlawful (in accordance with the provisions of the order) but for the limiting provisions.

(3) As from the end of the transitional period, the order is to have effect in relation to the agreement as if the limiting provisions had never had effect.

#### Marginal Citations

**M122** 1973 c. 41.

*Status:* Point in time view as at 09/11/1998. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 27 March 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)

VALID FROM 01/03/2000

*Part III of the Act*

- 42 (1) The repeals made by section 1 do not affect any proceedings in respect of an application which is made to the Court under Part III of the <sup>M123</sup>Fair Trading Act 1973, but is not determined, before the starting date.
- (2) The question whether (for the purposes of sub-paragraph (1)) an application has been determined is to be decided in accordance with sub-paragraphs (3) and (4).
- (3) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (4) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.
- (5) Any amendment made by Schedule 12 to this Act which substitutes references to a relevant Court for references to the Court is not to affect proceedings of the kind referred to in sub-paragraph (1).

**Marginal Citations**

**M123** 1973 c. 41.

VALID FROM 01/03/2000

**PART VI**

THE COMPETITION ACT 1980

*Undertakings*

- 43 (1) Subject to sub-paragraph (2), an undertaking accepted by the Director under section 4 or 9 of the <sup>M124</sup>Competition Act 1980 ceases to have effect on the coming into force of the repeal by this Act of that section.
- (2) If the undertaking relates to an agreement which on the starting date is the subject of continuing proceedings, the undertaking continues to have effect for the purposes of section 29 of the Competition Act 1980 until the proceedings are determined.

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#### Marginal Citations

M124 1980 c. 21.

#### *Application of sections 25 and 26*

- 44 The repeals made by section 1 do not affect—
- (a) the operation of section 25 of the Competition Act 1980 in relation to an application under section 1(3) of the RTPA which is made before the starting date;
  - (b) an application under section 26 of the Competition Act 1980 which is made before the starting date.

VALID FROM 01/03/2000

### PART VII

#### MISCELLANEOUS

#### *Disclosure of information*

- 45 (1) Section 55 of this Act applies in relation to information which, immediately before the starting date, is subject to section 41 of the RTPA as it applies in relation to information obtained under or as a result of Part I.
- (2) But section 55 does not apply to any disclosure of information of the kind referred to in sub-paragraph (1) if the disclosure is made—
- (a) for the purpose of facilitating the performance of functions of a designated person under the <sup>M125</sup>Control of Misleading Advertisements Regulations 1988; or
  - (b) for the purposes of any proceedings before the Court or of any other legal proceedings under the RTPA or the <sup>M126</sup>Fair Trading Act 1973 or the Control of Misleading Advertisements Regulations 1988.
- (3) Section 56 applies in relation to information of the kind referred to in sub-paragraph (1) if particulars containing the information have been entered or filed on the special section of the register maintained by the Director under, or as a result of, section 27 of the RTPA or paragraph 10 of this Schedule.
- (4) Section 55 has effect, in relation to the matters as to which section 41(2) of the RTPA had effect, as if it contained a provision similar to section 41(2).

#### Marginal Citations

M125 S.I. 1988/915.

M126 1973 c. 41.

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*The Court*

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If it appears to the Lord Chancellor that a person who ceases to be a non-judicial member of the Court as a result of this Act should receive compensation for loss of office, he may pay to him out of moneys provided by Parliament such sum as he may with the approval of the Treasury determine.

VALID FROM 11/01/1999

SCHEDULE 14

Section 74(3).

REPEALS AND REVOCATIONS

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**Status:**

Point in time view as at 09/11/1998. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

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