

SCHEDULES

SCHEDULE 10

REGULATORS

PART IV

UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

The Telecommunications Act 1984 (c. 12)

- 9 (1) The Telecommunications Act 1984 is amended as follows.
- (2) In section 13 (licence modification references to Competition Commission), for subsections (9) and (10) substitute—
- “(9) The provisions mentioned in subsection (9A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the Fair Trading Act 1973 (in this Act referred to as “the 1973 Act”);
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in section 70 of the 1973 Act—
 - (i) references to the Secretary of State were references to the Director, and
 - (ii) the reference to three months were a reference to six months.
- (9A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
 - (c) section 24 of the Competition Act 1980 (modification of provisions about performance of such functions).
- (10) For the purposes of references under this section, the Secretary of State is to appoint not less than three members of the Competition Commission.
- (10A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (10) to be members of the group.”
- (3) In section 14, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

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- (4) In section 16 (securing compliance with licence conditions), in subsection (5), after paragraph (a), omit “or” and after paragraph (b), insert “or
 (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (5) In section 50 (functions under 1973 and 1980 Acts), after subsection (6), insert—
 “(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—
 (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
 (b) paragraph 1 of Schedule 2 to the Deregulation and Contracting Out Act 1994,
 as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (6) In section 95 (modification by orders under other enactments)—
 (a) in subsection (1), omit “or section 10(2)(a) of the 1980 Act”;
 (b) in subsection (2)—
 (i) after paragraph (a), insert “or”;
 (ii) omit paragraph (c) and the “or” immediately before it;
 (c) in subsection (3), omit “or the 1980 Act”.
- (7) In section 101(3) (general restrictions on disclosure of information)—
 (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
 (b) after paragraph (m), insert—
 “(n) the Competition Act 1998”.
- (8) At the end of section 101, insert—
 “(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.”

The Gas Act 1986 (c. 44)

- 10 (1) The Gas Act 1986 is amended as follows.
- (2) In section 24 (modification references to the Competition Commission), for subsection (7) substitute—
 “(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—
 (a) the functions of the Competition Commission in relation to those references were functions under the Fair Trading Act 1973;
 (b) the expression “merger reference” included a reference under this section;
 (c) in section 70 of the Fair Trading Act 1973—

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- (i) references to the Secretary of State were references to the Director, and
- (ii) the reference to three months were a reference to six months.

(7A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
 - (c) section 24 of the Competition Act 1980 (modification of provisions about performance of such functions).”
- (3) In section 25, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 27 (modification by order under other enactments)—
- (a) in subsection (1), omit “or section 10(2)(a) of the Competition Act 1980”;
 - (b) in subsection (3)(a), omit from “or” to “competition reference”;
 - (c) in subsection (6), omit “or the said Act of 1980”.
- (5) In section 28 (orders for securing compliance with certain provisions), in subsection (5), after paragraph (aa), omit “or” and after paragraph (b), insert “or
- (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 42(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (e) and (f) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
 - (b) after paragraph (n), insert—
 - “(o) the Competition Act 1998”.
- (7) At the end of section 42, insert—
- “(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

The Water Act 1989 (c. 15)

- 11 In section 174(3) of the Water Act 1989 (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
 - (b) after paragraph (l), insert—
 - “(ll) the Competition Act 1998”.

The Electricity Act 1989 (c. 29)

- 12 (1) The Electricity Act 1989 is amended as follows.

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

- (2) In section 12 (modification references to Competition Commission), for subsections (8) and (9) substitute—
- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the 1973 Act—
- (i) references to the Secretary of State were references to the Director, and
- (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.”
- (3) In section 13, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 15 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
- (b) in subsection (2)—
- (i) after paragraph (a), insert “or”;
- (ii) omit paragraph (c) and the “or” immediately before it;
- (c) in subsection (3), omit “or the 1980 Act”.
- (5) In section 25 (orders for securing compliance), in subsection (5), after paragraph (b), omit “or” and after paragraph (c), insert “or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 43 (functions with respect to competition), after subsection (6), insert—
- “(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—
- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or

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- (b) paragraph 4 of Schedule 2 to the Deregulation and Contracting Out Act 1994,
as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (7) In section 57(3) (general restrictions on disclosure of information)—
 - (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
 - (b) after paragraph (no), insert—
“(nop) the Competition Act 1998”.
- (8) At the end of section 57, insert—
“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

The Water Industry Act 1991 (c. 56)

- 13 (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 12(5) (determinations under conditions of appointment)—
 - (a) after “this Act”, insert “or”;
 - (b) omit “or the 1980 Act”.
 - (3) In section 14 (modification references to Competition Commission), for subsections (7) and (8) substitute—
“(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—
 - (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in section 70 of the 1973 Act—
 - (i) references to the Secretary of State were references to the Director, and
 - (ii) the reference to three months were a reference to six months.
 - (7A) The provisions are—
 - (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
 - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
 - (8) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.

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- (8A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select one or more of the members appointed under subsection (8) to be members of the group.”
- (4) In section 15, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (5) In section 17 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
 - (b) in subsection (2)—
 - (i) after paragraph (a), insert “or”;
 - (ii) omit paragraph (c) and the “or” immediately before it;
 - (c) in subsection (4), omit “or the 1980 Act”.
- (6) In section 19 (exceptions to duty to enforce), after subsection (1), insert—
- “(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 19(3), after “subsection (1) above”, insert “or, in the case of the Director, is satisfied as mentioned in subsection (1A) above,”.
- (8) In section 31 (functions of Director with respect to competition), after subsection (8), insert—
- “(8A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—
- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
 - (b) paragraph 8 of Schedule 2 to the Deregulation and Contracting Out Act 1994,
- as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (9) After section 206(9) (restriction on disclosure of information), insert—
- “(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (9) of this section.”
- (10) In Schedule 15 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
 - (b) after the entry relating to the Railways Act 1993, insert the entry—
- “The Competition Act 1998”.

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

The Water Resources Act 1991 (c. 57)

- 14 In Schedule 24 to the Water Resources Act 1991 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
 - (b) after the entry relating to the Coal Industry Act 1994, insert the entry—

“The Competition Act 1998”.

The Railways Act 1993 (c. 43)

- 15 (1) The Railways Act 1993 is amended as follows.
- (2) In section 13 (modification references to the Competition Commission), for subsection (8) substitute—
- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
 - (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in section 70 of the 1973 Act—
 - (i) references to the Secretary of State were references to the Director, and
 - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
 - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
 - (c) section 24 of the Competition Act 1980 (in this Part referred to as “the 1980 Act”) (modification of provisions about performance of such functions).”
- (3) In section 14, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 16 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
 - (b) in subsection (2)—
 - (i) after paragraph (a), insert “or”;
 - (ii) omit paragraph (c) and the “or” immediately before it;
 - (c) in subsection (5), omit “or the 1980 Act”.
- (5) In section 22, after subsection (6), insert—
- “(6A) Neither the Director General of Fair Trading nor the Regulator may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.

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- (6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—
 - (a) which is connected with an access agreement; and
 - (b) in respect of which section 35(1)(b) of that Act applies.”
- (6) In section 55 (orders for securing compliance), after subsection (5), insert—

“(5A) The Regulator shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 55—
 - (a) in subsection (6), after “subsection (5)”, insert “or (5A)”; and
 - (b) in subsection (11), for “subsection (10)” substitute “subsections (5A) and (10)”.
- (8) Omit section 131 (modification of Restrictive Trade Practices Act 1976).
- (9) In section 145(3) (general restrictions on disclosure of information)—
 - (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976); and
 - (b) after paragraph (q), insert—

“(qq) the Competition Act 1998.”
- (10) After section 145(6), insert—

“(6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

The Channel Tunnel Rail Link Act 1996 (c. 61)

- 16 (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (6), at the end of the paragraph about regulatory functions, insert “other than any functions assigned to him by virtue of section 67(3) of that Act (“Competition Act functions”).
- (7) The Regulator may, when exercising any Competition Act function, have regard to any matter to which he would have regard if—
 - (a) he were under the duty imposed by subsection (1) or (2) above in relation to that function; and
 - (b) the matter is one to which the Director General of Fair Trading could have regard if he were exercising that function.”
- (3) In section 22 (restriction of functions in relation to competition etc.), for subsection (3) substitute—

“(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the Railways Act 1993 (by virtue of which he exercises concurrently with the Director General of Fair Trading certain

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

functions under Part I of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—

- (a) any agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act that have been entered into or taken by, or
- (b) any conduct of the kind mentioned in section 18(1) of that Act that has been engaged in by,

a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”