

SCHEDULES

SCHEDULE 13

TRANSITIONAL PROVISIONS AND SAVINGS

PART IV

ON AND AFTER THE STARTING DATE

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- 10 (1) This paragraph applies even though the relevant provisions of the RTPA are repealed by this Act.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

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- (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—
 - (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.

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- 11 (1) Even though section 3 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed—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.

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.

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).

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.

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.

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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.

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.

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.

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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.
- (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.

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.

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).

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

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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.

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
 - (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.

Special cases

- 26 (1) In the case of an agreement in respect of which—

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- (a) a direction under section 127(2) of the 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 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.

CHAPTER IV

THE UTILITIES

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.

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

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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 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.

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 sub-paragraph (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.

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.

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- (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 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 Gas Act 1986;
 - “section 62 order” means an order made under section 62.

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.
 - (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,

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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.

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 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 an Article 41 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 an Article 41 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 33—
 - “Article 41 order” means an order under Article 41 of the Gas (Northern Ireland) Order 1996;
 - “Department” means the Department of Economic Development.

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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.

Railways

- 34 (1) In this paragraph—
- “section 131” means section 131 of the Railways Act 1993 (“the 1993 Act”);
 - “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

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- (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.

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 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 Gas Act 1986;
 - (c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the Electricity Act 1989;
 - (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the 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 Water Industry Act 1991;
 - (f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the 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 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.

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.
- (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.

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).

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- (5) In this paragraph—
“person” has the same meaning as in Part I;
“relevant exclusion” means an exclusion under paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3.

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.