



Enterprise Act 2002

2002 CHAPTER 40

PART 7

MISCELLANEOUS COMPETITION PROVISIONS

Miscellaneous

205 Super-complaints to regulators other than OFT

- (1) The Secretary of State may by order provide that section 11 is to apply to complaints made to a specified regulator in relation to a market of a specified description as it applies to complaints made to the OFT, with such modifications as may be specified.
- (2) An order under this section—
 - (a) shall be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) In this section—

“regulator” has the meaning given in section 54(1) of the 1998 Act; and
“specified” means specified in the order.

206 Power to modify Schedule 8

- (1) The Secretary of State may by order made by statutory instrument modify Schedule 8.
- (2) An order under this section may make—
 - (a) different provision for different cases or different purposes;
 - (b) such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) An order under this section may, in particular, modify that Schedule in its application by virtue of Part 3 of this Act, in its application by virtue of Part 4 of this Act, in its application by virtue of any other enactment (whether by virtue of Part 4 of this

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Act as applied by that enactment or otherwise) or in its application by virtue of every enactment that applies it.

- (4) An order under this section as extended by subsection (2) may modify any enactment comprised in or made under this Act, or any other enactment.
- (5) No order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) No modification of Schedule 8 in its application by virtue of Part 3 of this Act shall be made by an order under this section if the modification relates to a relevant merger situation or (as the case may be) a special merger situation which has been created before the coming into force of the order.
- (7) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 22, 33, 45 or 62 before the coming into force of the order.
- (8) No modification shall be made by an order under this section of Schedule 8 in its application in relation to references made under section 131 or 132 before the coming into force of the order (including references made under section 131 as applied by another enactment).
- (9) Before making an order under this section, the Secretary of State shall consult the OFT and the Commission.
- (10) Expressions used in this section which are also used in Part 3 of this Act have the same meaning in this section as in that Part.

207 Repeal of Schedule 4 to the 1998 Act

Section 3(1)(d) of and Schedule 4 to the 1998 Act (which provide for the exclusion from the Chapter 1 prohibition in cases involving designated professional rules) shall cease to have effect.

208 Repeal of Part 6 of Fair Trading Act 1973

Sections 78 to 80 of the 1973 Act (references to Commission other than monopoly and merger references) shall cease to have effect.

209 Reform of Community competition law

- (1) The Secretary of State may by regulations make such modifications of the 1998 Act as he considers appropriate for the purpose of eliminating or reducing any differences between—
 - (a) the domestic provisions of the 1998 Act, and
 - (b) European Community competition law,
 which result (or would otherwise result) from a relevant Community instrument made after the passing of this Act.
- (2) In subsection (1)—

“the domestic provisions of the 1998 Act” means the provisions of the 1998 Act so far as they do not implement or give effect to a relevant Community instrument;

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“European Community competition law” includes any Act or subordinate legislation so far as it implements or gives effect to a relevant Community instrument;

“relevant Community instrument” means a regulation or directive under Article 83 of the Treaty establishing the European Community.

- (3) The Secretary of State may by regulations repeal or otherwise modify any provision of an Act (other than the 1998 Act) which excludes any matter from the Chapter I prohibition or the Chapter II prohibition (within the meaning of Part 1 of the 1998 Act).
- (4) The power under subsection (3) may not be exercised—
 - (a) before the power under subsection (1) has been exercised; or
 - (b) so as to extend the scope of any exclusion that is not being removed by the regulations.
- (5) Regulations under this section may—
 - (a) confer power to make subordinate legislation;
 - (b) make such consequential, supplementary, incidental, transitory, transitional or saving provision as the Secretary of State considers appropriate (including provision modifying any Act or subordinate legislation); and
 - (c) make different provision for different cases or circumstances.
- (6) The power to make regulations under this section is exercisable by statutory instrument.
- (7) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (8) Paragraph 1(1)(c) of Schedule 2 to the European Communities Act 1972 (c. 68) (restriction on powers to legislate) shall not apply to regulations which implement or give effect to a relevant Community instrument made after the passing of this Act.