

SCHEDULES

SCHEDULE 25

MINOR AND CONSEQUENTIAL AMENDMENTS

Railways Act 1993 (c. 43)

- 30 (1) The Railways Act 1993 is amended as follows.
- (2) In section 4 (general duties of the Secretary of State and the Regulator)—
- (a) in subsection (2)(a), the words from “in cases where” to “market” shall cease to have effect;
 - (b) in subsection (7B), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
 - (c) subsection (8) shall cease to have effect.
- (3) In section 13 (licence modification references to Commission)—
- (a) in subsection (1A), after “section” in the first place where it appears there is inserted “, section 13A below”;
 - (b) subsections (8) and (8A) shall cease to have effect.
- (4) After section 13 there is inserted—

“13A References under section 13: time limits

- (1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the appropriate authority under subsection (3) below.
- (3) The appropriate authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The appropriate authority shall, in the case of an extension made by it under subsection (3) above—
 - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

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- (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence.

13B References under section 13: application of Enterprise Act 2002

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
 - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 13 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders), shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (5) In section 14 (reports on licence modification references)—
 - (a) after subsection (1) there is inserted—

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- “(1A) For the purposes of sections 15 to 15B below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (3) there is substituted—
- “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 13 above.
- (3A) In making any report on a reference under section 13 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”
- (6) In section 15C (provisions supplementary to Commission’s power to veto modifications following report), for subsections (1) and (2) there is substituted—
- “(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15A(4) or 15B(3) above.
- (2) In giving any notice under section 15A(4) or 15B(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2E) and (2F) below, for the purposes of any investigation by the Competition Commission for the purposes of the exercise of its functions under section 15A or 15B above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of subsection (2D) above, have effect as if—
- (a) subsection (2) were omitted;
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under section 15B(5) of the Railways Act 1993 of the modifications made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
 - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of subsection (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a copy of the modifications made by the Commission in connection with the reference concerned is sent to the Regulator under section 15B(5) of the Railways Act 1993 or, if no direction is given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day

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on which such a direction may be given within the permitted period.”.

- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 15A and 15B above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those subsections.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (7) In section 22 (amendment of access agreements), in subsection (6A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (8) In section 66 (amendments of the Fair Trading Act 1973)—
- (a) for subsection (3) there is substituted—
- “(3) For the purposes of Part 3 of the Enterprise Act 2002 (merger references), where a person enters into a franchise agreement as a franchisee, there shall be taken to be brought under his control an enterprise engaged in the supply of the railway services to which the agreement relates.”;
- (b) for subsection (6) there is substituted—
- “(6) Expressions used in subsection (3) above and in Part 3 of the Enterprise Act 2002 have the same meaning in that subsection as they have in that Part.”
- (9) In section 67 (respective functions of the Regulator and the Director General of Fair Trading, and functions of the Competition Commission)—
- (a) subsection (1) shall cease to have effect;
- (b) in subsections (3), (3A) and (8), for “the Director” (in each place) there is substituted “the OFT”;
- (c) in the sidenote, for “the Director General of Fair Trading” there is substituted “OFT”.
- (10) In section 69 (general functions), in subsection (3), for “the Director” (in both places) there is substituted “the OFT”.
- (11) In section 71 (publication of information and advice), in subsection (3)—
- (a) for “The Director” there is substituted “The OFT”;
- (b) for “section 124 of the 1973 Act” there is substituted “section 6 of the Enterprise Act 2002”.
- (12) In section 74(7) (annual and other reports of the Regulator), for “Section 125(1) of the 1973 Act (annual and other reports)” there is substituted “Paragraph 12A(1)

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of Schedule 7 to the Competition Act 1998 (annual reports of the Competition Commission)”.

(13) In section 83(1)—

- (a) the definition of “the Director” shall cease to have effect; and
- (b) after the definition of “notice period” there is inserted—

““the OFT” means the Office of Fair Trading;”.

(14) In section 145 (general restrictions on disclosure of information)—

- (a) in subsection (2)(b), for paragraph (ii) there is substituted—

“(ii) the Office of Fair Trading;”;

- (b) in subsection (3), after paragraph (qr) there is inserted—

“(qs) the Enterprise Act 2002;”

- (c) in subsection (6A)—

- (i) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;

- (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “Part 9 of the Enterprise Act 2002 (Information)”.

(15) In Schedule 4A (review of access charges by Regulator)—

- (a) for paragraph 10 there is substituted—

“References under paragraph 9: time limits

- 10 (1) Every reference under paragraph 9 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under paragraph 9 above shall not have effect (and no action shall be taken in relation to it under paragraph 12 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Regulator under sub-paragraph (3) below.
- (3) The Regulator may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under sub-paragraph (3) above in relation to the same reference.
- (5) The Regulator shall, in the case of an extension made by him under sub-paragraph (3) above—
 - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) send a copy of what has been published by him under paragraph (a) above to the persons on whom a copy of the review notice was served.

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References under paragraph 9: application of Enterprise Act 2002

- 10A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
- (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
 - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.”;

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(b) in paragraph 11—

(i) after sub-paragraph (4) there is inserted—

“(4A) For the purposes of paragraphs 12 to 14 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(4B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 9 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;

(ii) for sub-paragraph (5) there is substituted—

“(5) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 9 above.

(5A) In making any report on a reference under paragraph 9 above the Competition Commission must have regard to the following considerations before disclosing any information.

(5B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(5C) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.

(5D) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5C)(a) or (b) above is necessary for the purposes of the report.”;

(c) in paragraph 15, for sub-paragraphs (1) and (2) there is substituted—

“(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.

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- (2) In giving any notice under paragraph 13(4) or 14(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2E) and (2F) below, in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under paragraph 13 or 14 above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of sub-paragraph (2D) above, have effect as if—
- (a) subsection (2) were omitted;
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on

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- which it was possible to give such a direction within the permitted period”; and
- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a copy of the relevant changes made by the Commission in connection with the reference concerned is sent to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.
- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1) (a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.”