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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Paragraph 40. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 25

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Financial Services and Markets Act 2000 (c. 8)*

- 40 (1) The Financial Services and Markets Act 2000 is amended as follows.
- <sup>F1</sup>(2) .....
- <sup>F1</sup>(3) .....
- <sup>F1</sup>(4) .....
- <sup>F1</sup>(5) .....
- (6) In section 194 (general grounds on which power of intervention is exercisable), in subsection (3), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (7) In section 203 (power to prohibit the carrying on of Consumer Credit Act business)—
- (a) in subsection (1)—
- (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “ the Office of Fair Trading (“the OFT”) ”;
- (ii) for “he” there is substituted “ it ”;
- (b) in subsection (2), for “Director” and “he” there is substituted “ OFT ” and “ it ” respectively;
- (c) in subsections (6) and (7), for “Director” there is substituted “ OFT ”;
- and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”.
- (8) In section 204 (power to restrict the carrying on of Consumer Credit Act business), for “Director” (in each place) and “him” there is substituted “ OFT ” and “ it ” respectively.
- (9) In section 295 (notification), for “Director” there is substituted “ OFT ”.
- <sup>F2</sup>(10) .....
- <sup>F2</sup>(11) .....
- <sup>F2</sup>(12) .....
- <sup>F2</sup>(13) .....
- <sup>F2</sup>(14) .....
- <sup>F2</sup>(15) .....

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- (16) In section 399 (misleading the Director General of Fair Trading)—
- (a) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) in the sidenote, for “the Director General of Fair Trading” there is substituted “ the OFT ”.
- (17) In section 401 (proceedings for offences), in subsection (4), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (18) In section 427(3)(a) (transitional provisions), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (19) In Schedule 3 (EEA passport rights)—
- (a) in paragraph 15(3), for “the Director General of Fair Trading” and “him” there is substituted “ the Office of Fair Trading ” and “ it ” respectively;
  - (b) in paragraph 23(2), for “the Director of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (20) In Schedule 14 (role of Competition Commission)—
- (a) in paragraph 2(a), for “Director” and “it” there is substituted “ OFT ” and “ the Commission ” respectively;
  - (b) after paragraph 2 there is inserted—

*“Investigations under section 162: application of Enterprise Act 2002*

- 2A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of any investigation by the Commission under section 162 of this Act 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), 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) shall, in its application by virtue of sub-paragraph (1), have effect as if for sub-paragraph (ii) there were substituted—

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(“ if earlier, the day on which the report of the Commission on the investigation concerned is made or, if the Commission decides not to make a report, the day on which the Commission makes the statement required by section 162(3) of the Financial Services and Markets Act 2000. ”

- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Commission in connection with an investigation under section 162 of this Act 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.

*Section 162: modification of Schedule 7 to the Competition Act 1998*

- 2B For the purposes of its application in relation to the function of the Commission of deciding in accordance with section 162(2) of this Act not to make a report, paragraph 15(7) of Schedule 7 to the Competition Act 1998 (power of the Chairman to act on his own while a group is being constituted) has effect as if, after paragraph (a), there were inserted “; or
- (aa) in the case of an investigation under section 162 of the Financial Services and Markets Act 2000, decide not to make a report in accordance with subsection (2) of that section (decision not to make a report where no useful purpose would be served). ”

*Reports under section 162: further provision*

- 2C (1) For the purposes of section 163 of this Act, a conclusion contained in a report of the 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 investigation concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (2) If a member of a group so constituted disagrees with any conclusions contained in a report made under section 162 of this Act as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

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- (3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission under section 162.”;
- (c) paragraph 3 (applied provisions) shall cease to have effect.
- (21) In Schedule 16 (prohibitions and restrictions imposed by Director General of Fair Trading)—
- (a) in the heading, for “DIRECTOR GENERAL OF FAIR TRADING” there is substituted “ OFFICE OF FAIR TRADING ”;
- (b) for “Director” (in each place), “his” (in each place), “he” (in both places) and “him” (in both places) there is substituted “ OFT ”, “ its ”, “ the OFT ” and “ the OFT ” respectively.

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**Textual Amendments**

- F1** Sch. 25 para. 40(2)-(5) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 19** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F2** Sch. 25 para. 40(10)-(15) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 19** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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**Commencement Information**

- I1** Sch. 25 para. 40 wholly in force at 20.6.2003; Sch. 25 para. 40 not in force at Royal Assent see s. 279; Sch. 25 para. 40(1) in force for certain purposes and Sch. 25 para. 40(2)-(20)(a)(21) in force at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., Sch. 25 para. 40(1)(20)(b)(c) in force at 20.6.2003 by S.I. 2003/1397, **art. 2(1)**, Sch.

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