

*Status: Point in time view as at 26/10/2023.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Part 2. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 16

#### MERGERS OF ENERGY NETWORK ENTERPRISES

##### PART 2

##### CONSEQUENTIAL AMENDMENTS OF PART 3 OF ENTERPRISE ACT 2002

4 Part 3 of the Enterprise Act 2002 is amended as follows.

**Commencement Information**

**II** Sch. 16 para. 4 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

5 (1) Section 22 (duty to make references in relation to completed mergers) is amended as follows.

(2) In subsection (3)(c), after “section 33” insert “or [68B](#) or [68C](#)”.

(3) In subsection (7)(a), after “section 33” insert “, [68B](#) or [68C](#)”.

**Commencement Information**

**I2** Sch. 16 para. 5 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

6 In section 33(3)(c) (circumstances in which references in relation to anticipated mergers may not be made), after “section 22” insert “or [68B](#) or [68C](#)”.

**Commencement Information**

**I3** Sch. 16 para. 6 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

7 (1) Section 42 (intervention by Secretary of State in certain public interest cases) is amended as follows.

(2) In subsection (1)(b), for “section 22 or 33” substitute “section 22, 33, [68B](#) or [68C](#)”.

(3) In subsection (1)(c), after “33” insert “or [subsection \(2\)\(a\)](#) of section [68C](#)”.

(4) In subsection (1)(d)—

(a) for “section 22 or 33” substitute “section 22, 33, [68B](#) or [68C](#)”;

(b) in sub-paragraph (1), after the second “or (a)” insert “(including those provisions as applied by sections [68B](#) and [68C](#))”.

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**I4** Sch. 16 para. 7 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 8 In section 56(2) (competition cases where intervention on public interest grounds ceases), for “or 33” (in both places it occurs) substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I5** Sch. 16 para. 8 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 9 In section 57(1) (duties of CMA and OFCOM to inform Secretary of State), for “section 22 or 33” substitute “section 22, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I6** Sch. 16 para. 9 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 10 In the italic heading at the beginning of Chapter 4, for “section 22 or 33” substitute “section 22, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I7** Sch. 16 para. 10 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 11 (1) Section 72 (initial enforcement orders: completed or anticipated mergers) is amended as follows.
- (2) In subsection (1)(a), for “section 22 or 33” substitute “section 22, 33, [68B](#) or [68C](#)”.
- (3) In subsection (6)(a) and (d), for “section 22 or 33” substitute “section 22, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I8** Sch. 16 para. 11 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 12 (1) Section 73 (undertakings in lieu of references) is amended as follows.
- (2) In the heading, for “22 or 33” substitute “22, 33, [68B](#) or [68C](#)”.
- (3) After subsection (3) insert—
- “(3A) Subsection ([3B](#)) applies if the CMA considers that it is under a duty to make a reference under section [68B](#) or [68C](#); and for the purposes of this subsection it must—
- (a) disregard the operation of section 22(3)(b) or 33(3)(b) (as applied by section [68B](#) or [68C](#)), but
- (b) take account of its power under section [68B\(2\)](#) or [68C\(2\)](#) to decide not to make such a reference.

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(3B) The CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

(3C) In proceeding under subsection (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudice.

(3D) Before proceeding under subsection (3B), the CMA must—

- (a) ask the Gas and Electricity Markets Authority to give its opinion on the effect of the undertakings offered, and
- (b) consider the Authority’s opinion.”

(4) In subsection (4), after “subsection (2)” insert “or (3B)”.

**Commencement Information**

**I9** Sch. 16 para. 12 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

13 (1) Section 73A (time-limits for consideration of undertakings) is amended as follows.

(2) In subsection (1), after “73(2)” insert “or (3B)”.

(3) In subsection (2), for “those purposes” substitute “the purposes of section 73(2) or (3B)”.

**Commencement Information**

**I10** Sch. 16 para. 13 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

14 (1) Section 74 (effect of undertakings under section 73) is amended as follows.

(2) In subsection (1), for “or 45” substitute “, 45, 68B or 68C”.

(3) In subsection (5)(a), for “or 33” substitute “, 33, 68B or 68C”.

**Commencement Information**

**I11** Sch. 16 para. 14 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

15 In section 77(1)(a) (restrictions on certain dealings: completed mergers), after “22” insert “or 68B”.

**Commencement Information**

**I12** Sch. 16 para. 15 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

16 In section 78(1)(a) (restrictions on certain share dealings: anticipated mergers), after “33” insert “or 68C”.

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**Commencement Information**

**I13** Sch. 16 para. 16 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

17 In section 79(1) and (2) (sections 77 and 78: further interpretation provisions), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I14** Sch. 16 para. 17 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

18 In section 80(1), (7) and (8) (interim undertakings), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I15** Sch. 16 para. 18 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

19 In section 81(1), (7) and (8) (interim orders), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I16** Sch. 16 para. 19 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

20 In section 82(3) and (4) (final undertakings), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I17** Sch. 16 para. 20 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

21 In section 84(5) (final orders), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I18** Sch. 16 para. 21 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

22 (1) Section 100 (exceptions to protection given by merger notices) is amended as follows.

(2) In subsection (1), for “or (as the case may be) 33” substitute “, 33, [68B](#) or [68C](#)”.

(3) In subsection (2)(a), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I19** Sch. 16 para. 22 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

23 In section 104(6) (certain duties of relevant authorities to consult), in the definition of “relevant decision”, in paragraph (a)(i), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

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**I20** Sch. 16 para. 23 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 24 In section 105(1) (general information duties of CMA), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I21** Sch. 16 para. 24 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 25 (1) Section 106 (advice and information about references) is amended as follows.  
(2) In the heading, for “sections 22 and 33” substitute “section 22, 33, [68B](#) or [68C](#)”.  
(3) In subsection (1)(a), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I22** Sch. 16 para. 25 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 26 (1) Section 107 (further publicity requirements) is amended as follows.  
(2) In subsection (1)(a), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.  
(3) In subsection (1)(aa), for “subsection (2)(b) of section 33” substitute “section 33(2)(b) or [68C\(2\)\(a\)](#)”.  
(4) In subsection (1)(b), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.  
(5) In subsection (2)(a), at the end insert “or [68C](#)”.  
(6) In subsection (2)(b), for the words from “a reference” to the end substitute “a reference under section 22 or [68B](#) as if it had been made under section 33 or [68C](#) or to treat a reference under section 33 or [68C](#) as if it had been made under section 22 or [68B](#)”.

**Commencement Information**

**I23** Sch. 16 para. 26 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 27 In section 109(A1)(a) (attendance of witnesses and production of documents etc), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I24** Sch. 16 para. 27 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 28 In section 110A(5) and (6) (restriction on powers to impose penalties under section 110), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

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**Commencement Information**

**I25** Sch. 16 para. 28 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 29 In section 110B(1) and (2) (restriction on powers to impose penalties under section 110), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I26** Sch. 16 para. 29 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 30 In section 121(3)(a) (fees), for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

**Commencement Information**

**I27** Sch. 16 para. 30 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 31 In section 124(5) (orders and regulations), at the beginning insert “Regulations made by the Secretary of State under section [68A](#) or”.

**Commencement Information**

**I28** Sch. 16 para. 31 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 32 In section 127(3) (associated person), for “or 62” substitute “, 62, [68B](#) or [68C](#)”.

**Commencement Information**

**I29** Sch. 16 para. 32 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

- 33 (1) The table in section 130 (index of defined expressions) is amended as follows.  
(2) After the entry for “Enactment” insert—

“Energy network enterprise	Section <a href="#">68A</a>
Energy network merger	Section <a href="#">68A</a> ”.

- (3) In the entry for “Final determination of reference under section 22 or 33”, for “or 33” substitute “, 33, [68B](#) or [68C](#)”.

- (4) In the entry for “References under section 22, 33, 45 or 62”—  
(a) for “or 62” substitute “, 62, [68B](#) or [68C](#)”, and  
(b) after “37(2)” insert “(including as applied by Schedule 5A)”.

- (5) In the entry for “The turnover in the United Kingdom of an enterprise”, after “28(2)” insert “(including as applied by Schedule 5A)”.

**Commencement Information**

**I30** Sch. 16 para. 33 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

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- 34 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.
- (2) In paragraph 4(1), for “or 45” substitute “, 45, 68B or 68C”.
- (3) In paragraph 4(2)(a), for “or 33” substitute “, 33, 68B or 68C”.

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**Commencement Information**

**I31** Sch. 16 para. 34 in force at Royal Assent, see [s. 334\(2\)\(j\)](#)

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