



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

An Act to make provision about the UK Green Investment Bank; to make provision about employment law; to establish and make provision about the Competition and Markets Authority and to abolish the Competition Commission and the Office of Fair Trading; to amend the Competition Act 1998 and the Enterprise Act 2002; to make provision for the reduction of legislative burdens; to make provision about copyright and rights in performances; to make provision about payments to company directors; to make provision about redress schemes relating to lettings agency work and property management work; to make provision about the supply of customer data; to make provision for the protection of essential supplies in cases of insolvency; to make provision about certain bodies established by Royal Charter; to amend section 9(5) of the Equality Act 2010; and for connected purposes. [25th April 2013]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### UK GREEN INVESTMENT BANK

#### 1 The green purposes

- (1) The green purposes are—
- (a) the reduction of greenhouse gas emissions;
  - (b) the advancement of efficiency in the use of natural resources;
  - (c) the protection or enhancement of the natural environment;
  - (d) the protection or enhancement of biodiversity;

(e) the promotion of environmental sustainability.

(2) In this Part, “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.

## **2 Designation of the UK Green Investment Bank**

(1) If the following three conditions are met, the Secretary of State may by order designate the UK Green Investment Bank for the purposes of sections 3 to 6.

(2) The first condition is that the Secretary of State is satisfied that the Bank’s objects in its articles of association are such that, acting consistently with them, it would engage only in activities that involve, or are incidental or conducive to, making, facilitating or encouraging investments that it considers likely to contribute to the achievement of one or more of the green purposes (whether in the United Kingdom or elsewhere).

(3) The second condition is that the Secretary of State is satisfied that the Bank’s objects in its articles of association are such that, acting consistently with them, its activities in making, facilitating or encouraging investments in each relevant period would (taken as a whole) be such as the Bank considers likely to contribute to a reduction of global greenhouse gas emissions.

(4) In subsection (3), “relevant period” means each financial year of the Bank taken together with all of its preceding financial years.

(5) The third condition is that the Secretary of State has laid before Parliament a copy of an undertaking (the “operational independence undertaking”) provided by the Secretary of State to the Bank for the purpose of facilitating the Bank’s ability to act as its directors consider appropriate in the light of the objects in its articles of association.

(6) An order may not be made under this section unless at the date on which it is made the UK Green Investment Bank is wholly owned by the Crown.

(7) An order under this section may not be amended or revoked.

(8) An order under this section—

(a) is to be made by statutory instrument, and

(b) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(9) References in this Part to the UK Green Investment Bank are to the public company limited by shares incorporated on 15 May 2012 with the company number SC424067 and with the name UK Green Investment Bank plc.

## **3 Alteration of the objects of the UK Green Investment Bank**

(1) Where an order has been made under section 2, the UK Green Investment Bank may not make any alteration to the objects in its articles of association unless—

(a) the alteration is made to give effect to an order of a court or other authority having power to alter the Bank’s articles of association, or

(b) the making of the alteration has been approved by the Secretary of State by order under this section.

(2) The Secretary of State may not make an order under this section approving the making of an alteration unless the following two conditions are met.

- (3) The first condition is that the Secretary of State is satisfied that, if the alteration were made, the Bank's objects in its articles of association would remain such that, acting consistently with them, it would engage only in activities that involve, or are incidental or conducive to, making, facilitating or encouraging investments that it considers likely to contribute to the achievement of one or more of the green purposes (whether in the United Kingdom or elsewhere).
- (4) The second condition is that the Secretary of State is satisfied that, if the alteration were made, the Bank's objects in its articles of association would remain such that, acting consistently with them, its activities in making, facilitating or encouraging investments in each relevant period (within the meaning given by section 2(4)) would (taken as a whole) be such as the Bank considers likely to contribute to a reduction of global greenhouse gas emissions.
- (5) An order under this section—
  - (a) is to be made by statutory instrument, and
  - (b) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### **4 Financial assistance**

- (1) Where an order has been made under section 2, the Secretary of State may, with the consent of the Treasury, give the UK Green Investment Bank financial assistance at any time when the Crown's shareholding in it is more than half of its issued share capital.
- (2) The financial assistance may be given in any form that the Secretary of State, with the consent of the Treasury, considers appropriate.
- (3) It may in particular be given by way of—
  - (a) grants,
  - (b) loans,
  - (c) guarantees,
  - (d) the purchase of share capital of the Bank, or
  - (e) the transfer of assets or rights to the Bank.
- (4) The financial assistance may be provided subject to such terms and conditions as the Secretary of State, with the consent of the Treasury, considers appropriate (including, in the case of a grant or a loan, conditions requiring repayment or, in the case of a guarantee, conditions requiring reimbursement of any sums paid under it).
- (5) The Treasury may arrange for money to be paid out of the National Loans Fund in order to enable loans to be made to the Bank under this section.
- (6) Nothing in this section affects the exercise of any power of the Treasury or the Secretary of State to give financial assistance to the Bank otherwise than under this section at a time when the Crown's shareholding in the Bank is not more than half of its issued share capital.

## **5 Accounts, reports and payments to directors**

- (1) Where an order has been made under section 2, the UK Green Investment Bank is to be treated as being a quoted company within the meaning of section 385(2) of the Companies Act 2006 for the purposes of the application to it of—
  - (a) Chapters 4 and 4A of Part 10 of that Act, and
  - (b) Parts 15 and 16 of that Act (in respect of a financial year).
- (2) Where an order has been made under section 2, each report prepared by the directors of the Bank for a financial year under section 415 of the Companies Act 2006 must include—
  - (a) an explanation of the steps that the Bank took in that year to ensure that its activities in making, facilitating or encouraging investments in that year and in any previous financial years would (taken as a whole) be likely to contribute to a reduction of global greenhouse gas emissions, and
  - (b) a statement of the directors' views on the likely effect of those activities in those years on global greenhouse gas emissions.

## **6 Documents to be laid before Parliament**

- (1) Subsection (2) applies if—
  - (a) after an order has been made under section 2, copies of the UK Green Investment Bank's annual accounts and reports are, in accordance with section 437 of the Companies Act 2006, laid before it in general meeting, and
  - (b) as at the date of the meeting, the Crown holds shares in the Bank.
- (2) The Secretary of State must, as soon as practicable after the meeting, lay a copy of the annual accounts and reports before Parliament.
- (3) Subsection (4) applies if—
  - (a) after an order has been made under section 2, the Secretary of State—
    - (i) makes a material alteration to the terms of the operational independence undertaking referred to in subsection (5) of section 2, or
    - (ii) revokes that undertaking, and
  - (b) as at the date of the alteration or revocation, the Crown's shareholding in the UK Green Investment Bank is more than half of its issued share capital.
- (4) The Secretary of State must, as soon as practicable after the date referred to in subsection (3)(b)—
  - (a) in the case of an alteration, lay a copy of the revised undertaking before Parliament;
  - (b) in the case of revocation of the undertaking, lay before Parliament a statement reporting the revocation.

## PART 2

### EMPLOYMENT

#### *Conciliation*

#### **7 Conciliation before institution of proceedings**

(1) After section 18 of the Employment Tribunals Act 1996 (conciliation) insert—

##### **“18A Requirement to contact ACAS before instituting proceedings**

(1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

This is subject to subsection (7).

(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If—

- (a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or
- (b) the prescribed period expires without a settlement having been reached,

the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

(5) The conciliation officer may continue to endeavour to promote a settlement after the expiry of the prescribed period.

(6) In subsections (3) to (5) “settlement” means a settlement that avoids proceedings being instituted.

(7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases.

The cases that may be prescribed include (in particular)—

- cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter;
- cases where proceedings that are not relevant proceedings are instituted by means of the same form as proceedings that are;
- cases where section 18B applies because ACAS has been contacted by a person against whom relevant proceedings are being instituted.

(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).

- (9) Where a conciliation officer acts under this section in a case where the prospective claimant has ceased to be employed by the employer and the proposed proceedings are proceedings under section 111 of the Employment Rights Act 1996, the conciliation officer may in particular—
- (a) seek to promote the reinstatement or re-engagement of the prospective claimant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
  - (b) where the prospective claimant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the prospective claimant.
- (10) In subsections (1) to (7) “prescribed” means prescribed in employment tribunal procedure regulations.
- (11) The Secretary of State may by employment tribunal procedure regulations make such further provision as appears to the Secretary of State to be necessary or expedient with respect to the conciliation process provided for by subsections (1) to (8).
- (12) Employment tribunal procedure regulations may (in particular) make provision—
- (a) authorising the Secretary of State to prescribe, or prescribe requirements in relation to, any form which is required by such regulations to be used for the purpose of providing information to ACAS under subsection (1) or issuing a certificate under subsection (4);
  - (b) requiring ACAS to give a person any necessary assistance to comply with the requirement in subsection (1);
  - (c) for the extension of the period prescribed for the purposes of subsection (3);
  - (d) treating the requirement in subsection (1) as complied with, for the purposes of any provision extending the time limit for instituting relevant proceedings, by a person who is relieved of that requirement by virtue of subsection (7)(a).

### **18B Conciliation before institution of proceedings: other ACAS duties**

- (1) This section applies where—
- (a) a person contacts ACAS requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings against that person, and
  - (b) ACAS has not received information from the prospective claimant under section 18A(1).
- (2) This section also applies where—
- (a) a person contacts ACAS requesting the services of a conciliation officer in relation to a matter that (if not settled) is likely to give rise to relevant proceedings by that person, and
  - (b) the requirement in section 18A(1) would apply to that person but for section 18A(7).

- (3) Where this section applies a conciliation officer shall endeavour to promote a settlement between the persons who would be parties to the proceedings.
  - (4) If at any time—
    - (a) the conciliation officer concludes that a settlement is not possible, or
    - (b) a conciliation officer comes under the duty in section 18A(3) to promote a settlement between the persons who would be parties to the proceedings,the duty in subsection (3) ceases to apply at that time.
  - (5) In subsections (3) and (4) “settlement” means a settlement that avoids proceedings being instituted.
  - (6) Subsection (9) of section 18A applies for the purposes of this section as it applies for the purposes of that section.”
- (2) Schedule 1 (conciliation: minor and consequential amendments) has effect.

## **8 Extension of limitation periods to allow for conciliation**

Schedule 2 (extension of limitation periods to allow for conciliation) has effect.

## **9 Extended power to define “relevant proceedings” for conciliation purposes**

- (1) Section 18 of the Employment Tribunals Act 1996 (conciliation) is amended as follows.
- (2) In subsection (8) (power of Secretary of State and Lord Chancellor to amend list in subsection (1) of section 18), for paragraphs (a) and (b) substitute “amend the definition of “relevant proceedings” in subsection (1) by adding to or removing from the list in that subsection particular types of employment tribunal proceedings.”
- (3) After subsection (8) insert—
  - “(9) An order under subsection (8) that adds employment tribunal proceedings to the list in subsection (1) may amend an enactment so as to extend the time limit for instituting those proceedings in such a way as appears necessary or expedient in order to facilitate the conciliation process provided for by section 18A.
  - (10) An order under subsection (8) that removes employment tribunal proceedings from the list in subsection (1) may—
    - (a) repeal or revoke any provision of an enactment that, for the purpose mentioned in subsection (9), extends the time limit for instituting those proceedings;
    - (b) make further amendments which are consequential on that repeal or revocation.”

*ACAS***10 ACAS: prohibition on disclosure of information**

In Part 6 of the Trade Union and Labour Relations (Consolidation) Act 1992 (ACAS etc), after section 251A insert—

**“251B Prohibition on disclosure of information**

- (1) Information held by ACAS shall not be disclosed if the information—
- (a) relates to a worker, an employer of a worker or a trade union (a “relevant person”), and
  - (b) is held by ACAS in connection with the provision of a service by ACAS or its officers.

This is subject to subsection (2).

- (2) Subsection (1) does not prohibit the disclosure of information if—
- (a) the disclosure is made for the purpose of enabling or assisting ACAS to carry out any of its functions under this Act,
  - (b) the disclosure is made for the purpose of enabling or assisting an officer of ACAS to carry out the functions of a conciliation officer under any enactment,
  - (c) the disclosure is made for the purpose of enabling or assisting—
    - (i) a person appointed by ACAS under section 210(2), or
    - (ii) an arbitrator or arbiter appointed by ACAS under any enactment,
 to carry out functions specified in the appointment,
  - (d) the disclosure is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom),
  - (e) the disclosure is made in order to comply with a court order,
  - (f) the disclosure is made in a manner that ensures that no relevant person to whom the information relates can be identified, or
  - (g) the disclosure is made with the consent of each relevant person to whom the information relates.
- (3) Subsection (2) does not authorise the making of a disclosure which contravenes the Data Protection Act 1998.
- (4) A person who discloses information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Proceedings in England and Wales for an offence under this section may be instituted only with the consent of the Director of Public Prosecutions.
- (6) For the purposes of this section information held by—
- (a) a person appointed by ACAS under section 210(2) in connection with functions specified in the appointment, or
  - (b) an arbitrator or arbiter appointed by ACAS under any enactment in connection with functions specified in the appointment,



is information that is held by ACAS in connection with the provision of a service by ACAS.”

### *Procedure for deciding tribunal cases*

## **11 Decisions by legal officers**

- (1) In section 4 of the Employment Tribunals Act 1996 (composition of a tribunal), after subsection (6C) insert—

“(6D) A person appointed as a legal officer in accordance with regulations under section 1(1) may determine proceedings in respect of which an employment tribunal has jurisdiction, or make a decision falling to be made in the course of such proceedings, if—

- (a) the proceedings are of a description specified in an order under this subsection made by the Secretary of State and the Lord Chancellor acting jointly, and
- (b) all the parties to the proceedings consent in writing;

and any determination or decision made under this subsection shall be treated as made by an employment tribunal.”

- (2) In section 41(2) of that Act (orders etc subject to affirmative resolution procedure), after “section 4(4)” insert “or (6D)”.

## **12 Composition of Employment Appeal Tribunal**

- (1) The Employment Tribunals Act 1996 is amended as set out in subsections (2) to (4).

- (2) In section 28 (composition of Appeal Tribunal), for subsections (2) to (4A) substitute—

“(2) Proceedings before the Appeal Tribunal are to be heard by a judge alone.

This is subject to subsections (3) to (6) and to any provision made by virtue of section 30(2)(f) or (2A).

- (3) A judge may direct that proceedings are to be heard by a judge and either two or four appointed members.
- (4) A judge may, with the consent of the parties, direct that proceedings are to be heard by a judge and either one or three appointed members.
- (5) The Lord Chancellor may by order provide for proceedings of a description specified in the order to be heard by a judge and either two or four appointed members.
- (6) In proceedings heard by a judge and two or four appointed members, there shall be an equal number of—
  - (a) employer-representative members, and
  - (b) worker-representative members.

- (7) In this section—

“employer-representative members” means appointed members whose knowledge or experience of industrial relations is as representatives of employers;

“worker-representative members” means appointed members whose knowledge or experience of industrial relations is as representatives of workers.”

- (3) In section 30 (Appeal Tribunal procedure rules), in subsection (2)(f) (provision for dealing with interlocutory matters), for the words from “otherwise” to the end substitute “by an officer of the Appeal Tribunal”.
- (4) In section 41(2) (orders etc subject to affirmative resolution procedure), before “or 40” insert “, 28(5)”.
- (5) In consequence of the amendment made by subsection (2), omit paragraph 46 of Schedule 8 to the Tribunals, Courts and Enforcement Act 2007.

#### *Unfair dismissal*

### **13 Dismissal for political opinions: no qualifying period of employment**

In section 108 of the Employment Rights Act 1996 (qualifying period of employment), after subsection (3) insert—

“(4) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee’s political opinions or affiliation.”

### **14 Confidentiality of negotiations before termination of employment**

After section 111 of the Employment Rights Act 1996 insert—

#### **“111A Confidentiality of negotiations before termination of employment**

- (1) Evidence of pre-termination negotiations is inadmissible in any proceedings on a complaint under section 111.  
This is subject to subsections (3) to (5).
- (2) In subsection (1) “pre-termination negotiations” means any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee.
- (3) Subsection (1) does not apply where, according to the complainant’s case, the circumstances are such that a provision (whenever made) contained in, or made under, this or any other Act requires the complainant to be regarded for the purposes of this Part as unfairly dismissed.
- (4) In relation to anything said or done which in the tribunal’s opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.

(5) Subsection (1) does not affect the admissibility, on any question as to costs or expenses, of evidence relating to an offer made on the basis that the right to refer to it on any such question is reserved.”

## **15 Power by order to increase or decrease limit of compensatory award**

- (1) The Secretary of State may by order made by statutory instrument amend section 124 of the Employment Rights Act 1996 (limit of compensatory award etc) so as to vary the limit imposed for the time being by subsection (1) of that section.
- (2) The limit as so varied may be—
  - (a) a specified amount, or
  - (b) the lower of—
    - (i) a specified amount, and
    - (ii) a specified number multiplied by a week’s pay of the individual concerned.
- (3) Different amounts may be specified by virtue of subsection (2)(a) or (b)(i) in relation to employers of different descriptions.
- (4) An amount specified by virtue of subsection (2)(a) or (b)(i)—
  - (a) may not be less than median annual earnings;
  - (b) may not be more than three times median annual earnings.
- (5) A number specified by virtue of subsection (2)(b)(ii) may not be less than 52.
- (6) An order under this section may make consequential, supplemental, transitional, transitory or saving provision.
- (7) The consequential provision that may be made under subsection (6) includes provision inserting a reference to section 124 of the Employment Rights Act 1996 in section 226(3) of that Act (week’s pay: calculation date in unfair dismissal cases).
- (8) A statutory instrument containing an order under this section is not to be made unless a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
- (9) In this section “median annual earnings” means—
  - (a) the latest figure for median gross annual earnings of full-time employees in the United Kingdom published by the Statistics Board (disregarding any provisional figures), or
  - (b) if that figure was published by the Statistics Board more than two years before the laying of the draft of the statutory instrument in question, an estimate of the current amount of such earnings worked out in whatever way the Secretary of State thinks fit.
- (10) In section 34 of the Employment Relations Act 1999 (indexation of amounts etc), after subsection (4) insert—

“(4A) A reference in this section to a sum specified in section 124(1) of the Employment Rights Act 1996 does not include anything specified by virtue of section 15(2)(b)(ii) of the Enterprise and Regulatory Reform Act 2013 (specified number multiplied by a week’s pay of the individual concerned).

- (4B) As regards a sum specified in section 124(1) of the Employment Rights Act 1996, the duty under subsection (2) to make an order with effect from 6 April in a particular year does not arise where an order varying such a sum with effect from a day within 12 months before that date has been made under section 15(1) of the Enterprise and Regulatory Reform Act 2013.”

*Financial penalties*

**16 Power of employment tribunal to impose financial penalty on employers etc**

- (1) After section 12 of the Employment Tribunals Act 1996 insert—

*“Financial penalties*

**12A Financial penalties**

- (1) Where an employment tribunal determining a claim involving an employer and a worker—
- (a) concludes that the employer has breached any of the worker’s rights to which the claim relates, and
  - (b) is of the opinion that the breach has one or more aggravating features, the tribunal may order the employer to pay a penalty to the Secretary of State (whether or not it also makes a financial award against the employer on the claim).
- (2) The tribunal shall have regard to an employer’s ability to pay—
- (a) in deciding whether to order the employer to pay a penalty under this section;
  - (b) (subject to subsections (3) to (7)) in deciding the amount of a penalty.
- (3) The amount of a penalty under this section shall be—
- (a) at least £100;
  - (b) no more than £5,000.
- This subsection does not apply where subsection (5) or (7) applies.
- (4) Subsection (5) applies where an employment tribunal—
- (a) makes a financial award against an employer on a claim, and
  - (b) also orders the employer to pay a penalty under this section in respect of the claim.
- (5) In such a case, the amount of the penalty under this section shall be 50% of the amount of the award, except that—
- (a) if the amount of the financial award is less than £200, the amount of the penalty shall be £100;
  - (b) if the amount of the financial award is more than £10,000, the amount of the penalty shall be £5,000.
- (6) Subsection (7) applies, instead of subsection (5), where an employment tribunal—

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*Status: This is the original version (as it was originally enacted).*

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- (a) considers together two or more claims involving different workers but the same employer, and
- (b) orders the employer to pay a penalty under this section in respect of any of those claims.

(7) In such a case—

- (a) the amount of the penalties in total shall be at least £100;
- (b) the amount of a penalty in respect of a particular claim shall be—
  - (i) no more than £5,000, and
  - (ii) where the tribunal makes a financial award against the employer on the claim, no more than 50% of the amount of the award.

But where the tribunal makes a financial award on any of the claims and the amount awarded is less than £200 in total, the amount of the penalties in total shall be £100 (and paragraphs (a) and (b) shall not apply).

- (8) Two or more claims in respect of the same act and the same worker shall be treated as a single claim for the purposes of this section.
- (9) Subsection (5) or (7) does not require or permit an order under subsection (1) (or a failure to make such an order) to be reviewed where the tribunal subsequently awards compensation under—
  - (a) section 140(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (failure to comply with tribunal’s recommendation),
  - (b) section 117 of the Employment Rights Act 1996 (failure to reinstate etc.),
  - (c) section 124(7) of the Equality Act 2010 (failure to comply with tribunal’s recommendation), or
  - (d) any other provision empowering the tribunal to award compensation, or further compensation, for a failure to comply (or to comply fully) with an order or recommendation of the tribunal.
- (10) An employer’s liability to pay a penalty under this section is discharged if 50% of the amount of the penalty is paid no later than 21 days after the day on which notice of the decision to impose the penalty is sent to the employer.

(11) In this section—

“claim”—

- (a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and
- (b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;

“employer” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also—

- (a) in relation to an individual seeking to be employed by a person as a worker, includes that person;

(b) in relation to a right conferred by section 47A or 63A of the Employment Rights Act 1996 (right to time off for young person for study or training), includes the principal within the meaning of section 63A(3) of that Act;

(c) in relation to a right conferred by the Agency Workers Regulations 2010 (S.I. 2010/93), includes the hirer within the meaning of those Regulations and (where the worker is not actually employed by the temporary work agency) the temporary work agency within that meaning;

“financial award” means an award of a sum of money, but does not include anything payable by virtue of section 13;

“worker” has the same meaning as in Part 4A of the Employment Rights Act 1996, and also includes an individual seeking to be employed by a person as a worker.

(12) The Secretary of State may by order—

- (a) amend subsection (3), (5) or (7) by substituting a different amount;
- (b) amend subsection (5), (7) or (10) by substituting a different percentage;
- (c) amend this section so as to alter the meaning of “claim”.

(13) The Secretary of State shall pay sums received under this section into the Consolidated Fund.”

(2) Schedule 3 (financial penalties: minor and consequential amendments) has effect.

#### *Protected disclosures*

### **17 Disclosures not protected unless believed to be made in the public interest**

In section 43B of the Employment Rights Act 1996 (disclosures qualifying for protection), in subsection (1), after “in the reasonable belief of the worker making the disclosure,” insert “is made in the public interest and”.

### **18 Power to reduce compensation where disclosure not made in good faith**

(1) Omit the words “in good faith” in the following provisions of Part 4A of the Employment Rights Act 1996 (protected disclosures)—

- (a) subsection (1) of section 43C (disclosure to employer or other responsible person);
- (b) paragraph (b) of section 43E (disclosure to Minister of the Crown);
- (c) subsection (1)(a) of section 43F (disclosure to prescribed person).

(2) In section 43G of that Act (disclosure in other cases), in subsection (1)—

- (a) omit paragraph (a);
- (b) in paragraph (b), for “he” substitute “the worker”.

(3) In section 43H of that Act (disclosure of exceptionally serious failure), in subsection (1)—

- (a) omit paragraph (a);
- (b) in paragraph (b), for “he” substitute “the worker”.

- (4) In section 49 of that Act (remedies for detriment suffered in employment), after subsection (6) insert—

“(6A) Where—

- (a) the complaint is made under section 48(1A), and
- (b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.”

- (5) In section 123 of that Act (compensatory award for unfair dismissal), after subsection (6) insert—

“(6A) Where—

- (a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure, and
- (b) it appears to the tribunal that the disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant by no more than 25%.”

## **19 Worker subjected to detriment by co-worker or agent of employer**

- (1) In section 47B of the Employment Rights Act 1996 (protected disclosures), after subsection (1) insert—

“(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

- (a) by another worker of W’s employer in the course of that other worker’s employment, or
  - (b) by an agent of W’s employer with the employer’s authority,
- on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker’s employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker’s employer.

(1D) In proceedings against W’s employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

- (a) from doing that thing, or
- (b) from doing anything of that description.

(1E) A worker or agent of W’s employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

- (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and
- (b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).”

- (2) In section 48 of that Act (complaints to employment tribunals), in subsection (5)—
  - (a) for “includes, where” substitute “includes—
    - (a) where”;
  - (b) at the end insert—
    - “(b) in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent.”

## **20 Extension of meaning of “worker”**

- (1) Section 43K of the Employment Rights Act 1996 (extension of meaning of “worker”) is amended as set out in subsections (2) to (7).
- (2) In subsection (1)(ba)—
  - (a) for “section 84 or 100 of” substitute “section 83(2), 84, 92, 100, 107, 115(4), 117 or 134 of, or Schedule 12 to,”;
  - (b) for “section 42 or 57 of” substitute “section 41(2)(b), 42, 50, 57, 64 or 92 of, or Schedule 7 to,”;
  - (c) omit the words after “the National Health Service (Wales) Act 2006”.
- (3) In subsection (1)(bb), after “section 17J” insert “or 17Q”.
- (4) In subsection (1)(c)—
  - (a) for the words before “in accordance with arrangements” substitute “works or worked as a person providing services”;
  - (b) in sub-paragraph (ii), after “section” insert “2C, 17AA, 17C,”.
- (5) Omit subsection (1)(ca) and the preceding “or”.
- (6) Omit subsection (2)(ba).
- (7) After subsection (3) insert—
  - “(4) The Secretary of State may by order make amendments to this section as to what individuals count as “workers” for the purposes of this Part (despite not being within the definition in section 230(3)).
  - (5) An order under subsection (4) may not make an amendment that has the effect of removing a category of individual unless the Secretary of State is satisfied that there are no longer any individuals in that category.”
- (8) In section 236(3) of that Act (orders etc subject to affirmative resolution procedure), after “shall be made under section” insert “43K(4),”.
- (9) In consequence of the amendments made by subsections (5) and (6), omit paragraph 7(a)(ii) and (b) of the Schedule to the Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 (S.I. 2006/1056).
- (10) Until the coming into force of the repeal (made by Schedule 3 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)) of sections 27 to 28 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), section 43K(1)(c)(ii) of the



Employment Rights Act 1996 has effect as if it included a reference to section 27A of the 1978 Act.

### *Miscellaneous*

## **21 Tribunal procedure: miscellaneous**

- (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) In section 9 (pre-hearing reviews and preliminary matters), in subsection (2) (deposit orders), in paragraph (a)—
  - (a) omit “, if he wishes to continue to participate in those proceedings,”;
  - (b) after “an amount not exceeding £1,000” insert “as a condition of—
    - (i) continuing to participate in those proceedings, or
    - (ii) pursuing any specified allegations or arguments”.
- (3) In section 13A (payments in respect of preparation time)—
  - (a) in subsection (3), after “shall also” insert “, subject to subsection (4),”;
  - (b) after subsection (3) insert—

“(4) Subsection (3) does not require the regulations to include provision to prevent an employment tribunal from making—

    - (a) an order of the kind mentioned in subsection (1), and
    - (b) an award of the kind mentioned in section 13(1)(a) that is limited to witnesses’ expenses.”
- (4) In section 42 (interpretation), in subsection (1), after the definition of “employment tribunal procedure regulations” insert—

““representative” shall be construed in accordance with section 6(1) (in Part 1) or section 29(1) (in Part 2),”.

## **22 Indexation of amounts: timing and rounding**

- (1) Section 34 of the Employment Relations Act 1999 (indexation of amounts, etc) is amended as follows.
- (2) In subsection (2)—
  - (a) omit “as soon as practicable”;
  - (b) at the end insert “, with effect from the following 6th April”.
- (3) In subsection (3), for the words after “the Secretary of State shall” substitute “round the result to the nearest whole pound, taking 50p as nearest to the next whole pound above”.

## **23 Renaming of “compromise agreements”, “compromise contracts” and “compromises”**

- (1) In the following provisions, for “compromise” (in each place where it occurs) substitute “settlement”—
  - (a) section 288(2A) and (2B) of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction on contracting out);

- (b) section 203(2)(f) and (3) of the Employment Rights Act 1996 (restrictions on contracting out);
  - (c) section 58(4) and (5) of the Pensions Act 2008 (restrictions on agreements to limit operation of Part 1).
- (2) In section 19A of the Employment Tribunals Act 1996 (conciliation: recovery of sums payable under compromises)—
- (a) in subsections (1), (3), (4), (5) and (6), for “compromise” (in each place where it occurs) substitute “settlement”;
  - (b) in subsection (12)—
    - (i) for “compromise” (in the first two places it occurs) substitute “settlement”;
    - (ii) omit “, or compromise,”;
  - (c) in the heading, for “compromises” substitute “settlements”.
- (3) In section 49 of the National Minimum Wage Act 1998 (restrictions on contracting out)—
- (a) in subsections (3) and (4), for “compromise” (in each place where it occurs) substitute “settlement”;
  - (b) after subsection (8) insert—
 

“(8A) In the application of this section in relation to Northern Ireland, subsections (3) and (4) above shall have effect as if for “settlement agreements” (in each place) there were substituted “compromise agreements.”
- (4) In section 28 of the Equality Act 2006 (legal assistance), in subsection (11), for “compromise contract or agreement” substitute “settlement agreement”.
- (5) In section 144 of the Equality Act 2010 (contracting out), in subsection (4)(b), for “compromise contract” substitute “settlement agreement”.
- (6) In section 147 of that Act (meaning of “qualifying compromise contract”), in subsections (2) and (5) and in the heading, for “compromise contract” substitute “settlement agreement”.

### *General*

## **24 Transitional provision**

- (1) Section 10 does not apply in relation to a disclosure, or a request for information, made before that section comes into force.
- (2) Section 12 does not apply in relation to proceedings that are in the process of being heard by the Employment Appeal Tribunal when that section comes into force.
- (3) Section 13 does not apply where the effective date of termination of the contract of employment in question is earlier than the date on which that section comes into force.
 

“Effective date of termination” here has the meaning given by section 97(1) of the Employment Rights Act 1996.
- (4) Section 14 does not apply to any offer made or discussions held before the commencement of that section.

- (5) Section 16 does not apply in relation to any claim presented before the end of the sixth month after the day on which this Act is passed (or before the commencement of that section).
- (6) Section 17, 18, 19 or 20 does not apply to a qualifying disclosure made before the section comes into force.  
  
“Qualifying disclosure” here has the meaning given by section 43B of the Employment Rights Act 1996.

## **PART 3**

### THE COMPETITION AND MARKETS AUTHORITY

#### **25 The Competition and Markets Authority**

- (1) There is to be a body corporate known as the Competition and Markets Authority.
- (2) In this Part that body is referred to as “the CMA”.
- (3) The CMA must seek to promote competition, both within and outside the United Kingdom, for the benefit of consumers.
- (4) Schedule 4 (which makes provision about the CMA) has effect.

#### **26 Abolition of the Competition Commission and the OFT**

- (1) The Competition Commission is abolished.
- (2) The Office of Fair Trading is abolished.
- (3) Schedule 5 (which amends the Competition Act 1998 and the Enterprise Act 2002 to make provision for the transfer of certain functions from the Competition Commission and the Office of Fair Trading to the CMA and to make other minor and consequential amendments) has effect.
- (4) Schedule 6 (which amends other enactments to make provision for the transfer of certain functions from the Competition Commission and the Office of Fair Trading to the CMA) has effect.

#### **27 Transfer schemes**

- (1) The Secretary of State may make one or more transfer schemes in connection with—
  - (a) the establishment of the CMA under this Act,
  - (b) the transfer of functions under or by virtue of this Act from the Competition Commission or the Office of Fair Trading to the CMA, or
  - (c) the abolition of that Commission or that Office under this Act.
- (2) A transfer scheme is a scheme for the transfer of property, rights and liabilities of the Competition Commission or the Office of Fair Trading to—
  - (a) the CMA, or
  - (b) a Minister of the Crown (as defined by section 8 of the Ministers of the Crown Act 1975).

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- (3) The things that may be transferred under a transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (4) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of, or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision that is the same as or similar to the TUPE regulations.
- (5) A transfer scheme may provide—
- (a) for the scheme to be modified by agreement after it comes into effect;
  - (b) for modifications to have effect from the date when the scheme first came into effect.
- (6) For the purposes of this section—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (7) In this section—
- “civil service” means the civil service of the State;
  - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
  - references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - references to the transfer of property include references to the grant of a lease.

## **28 Transitional provision: consultation**

- (1) This section applies in relation to a provision of this Act under or by virtue of which the CMA has a function of consulting another person in preparing rules, statements of policy, guidance or general advice or information.
- (2) At any time before the provision comes into force, the Office of Fair Trading or the Competition Commission or both bodies acting jointly—
  - (a) may carry out any consultation that the CMA would have power to carry out after the provision comes into force, and
  - (b) for that purpose, may prepare drafts of any documents to which the consultation relates.

- (3) At any time after the provision comes into force, the CMA may elect to treat any consultation carried out or other thing done under subsection (2) by the Office of Fair Trading or the Competition Commission (or by both bodies acting jointly) as carried out or done by the CMA.
- (4) The Secretary of State may direct the Office of Fair Trading or the Competition Commission, or both of them acting jointly, to exercise a power conferred by subsection (2).

## PART 4

### COMPETITION REFORM

#### CHAPTER 1

##### MERGERS

###### *Investigation powers*

### 29 Investigation powers: mergers

- (1) Section 109 of the Enterprise Act 2002 (“the 2002 Act”) (investigation powers in connection with attendance of witnesses etc.) is amended as follows.
- (2) Before subsection (1) insert—
  - “(A1) For the purposes of this section, the permitted purposes are the following—
    - (a) assisting the CMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a matter that is or has been the subject of a reference or possible reference under section 22 or 33;
    - (b) assisting the CMA or the Secretary of State in carrying out any functions, including enforcement functions, of the CMA or (as the case may be) the Secretary of State under or by virtue of this Part in connection with a matter that is or has been the subject of a reference or possible reference under section 45 or 62.”
- (3) In subsection (1), for the words from the beginning to “under this Part,” substitute “The CMA may, for a permitted purpose,”.
- (4) In subsection (2), for the words from the beginning to “under this Part,” substitute “The CMA may, for a permitted purpose,”.
- (5) In subsection (3), for the words from the beginning to “under this Part,” substitute “The CMA may, for a permitted purpose,”.
- (6) In subsection (4), after “shall” insert “—
  - (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and
  - (b)”.

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- (7) In subsection (5), for the words from the beginning to “under this Part,” substitute “The CMA, or any person nominated by it for the purpose, may for a permitted purpose”.
- (8) In subsection (6), for the words from “for the purpose of” to “under this Part” substitute “for a permitted purpose”.
- (9) After subsection (8) insert—
- “(8A) In subsection (A1), “enforcement functions” means—
- (a) in relation to the CMA—
- (i) functions conferred by virtue of section 87 on the CMA by enforcement orders;
- (ii) functions of the CMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (iii) functions of the CMA under or by virtue of section 75, 76, 83 or 92 in relation to enforcement undertakings or enforcement orders;
- (b) in relation to the Secretary of State—
- (i) functions conferred by virtue of section 87 on the Secretary of State by enforcement orders;
- (ii) functions of the Secretary of State in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
- (iii) functions of the Secretary of State under or by virtue of paragraph 5, 6 or 10 of Schedule 7 in relation to enforcement undertakings or enforcement orders.”
- (10) In section 110 (enforcement of powers under section 109: general), omit subsection (4).
- (11) After section 110 insert—

**“110A Restriction on powers to impose penalties under section 110**

- (1) No penalty shall be imposed by virtue of section 110(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.
- (2) In the following provisions of this section, “the section 109 power” means the power under section 109 to which the failure or (as the case may be) the obstruction or delay in question relates.
- (3) Where the section 109 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.
- (4) Except where subsection (3) applies, the relevant day is the day determined in accordance with the following provisions of this section.
- (5) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(a) in connection with a matter that is the subject of a possible

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reference under section 22 or 33, the relevant day is the day when the CMA finally decides whether to make the reference.

- (6) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(a) in connection with a matter that is the subject of a reference under section 22 or 33, the relevant day is the day when the reference is finally determined (see section 79).
- (7) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(b) in connection with a matter that is the subject of a possible reference under section 45 or 62, the relevant day is the day when the Secretary of State finally decides whether to make the reference.
- (8) Where the section 109 power is exercised for the purpose mentioned in section 109(A1)(b) in connection with a matter that is the subject of a reference under section 45 or 62, the relevant day is the day when the reference is finally determined.

#### **110B Section 110A: supplementary provision**

- (1) For the purpose of section 110A(5), the CMA finally decides whether to make a reference under section 22 or 33 if—
  - (a) the CMA decides that the duty to make such a reference applies;
  - (b) the CMA accepts an undertaking under section 73;
  - (c) the CMA decides not to make such a reference (otherwise than because it has accepted an undertaking under section 73);
  - (d) the initial period for the purposes of section 34ZA expires without the CMA having complied with the duty under subsection (1) of that section;
  - (e) the preliminary assessment period for the purposes of section 34A expires without the CMA having complied with the duty under subsection (2) of that section;
  - (f) the period permitted by section 73A for the CMA to make a decision required by subsection (2)(a) or (3) of that section expires without the CMA having made the decision.
- (2) For the purpose of section 110A(5), the time when the CMA finally decides whether to make a reference under section 22 or 33 is—
  - (a) in a case falling within subsection (1)(a), the making of the decision that the duty to make such a reference applies;
  - (b) in a case falling within subsection (1)(b), the acceptance of the undertaking;
  - (c) in a case falling within subsection (1)(c), the making of the decision not to make the reference;
  - (d) in a case falling within subsection (1)(d), the expiry of the initial period;
  - (e) in a case falling within subsection (1)(e), the expiry of the preliminary assessment period;
  - (f) in a case falling within subsection (1)(f), the expiry of the period in question.

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*Status: This is the original version (as it was originally enacted).*

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- (3) For the purpose of section 110A(7), the Secretary of State finally decides whether to make a reference under section 45 or 62 if—
- (a) the Secretary of State makes such a reference;
  - (b) the Secretary of State accepts an undertaking under paragraph 3 of Schedule 7;
  - (c) the Secretary of State decides not to make such a reference (otherwise than because of the acceptance of an undertaking under paragraph 3 of Schedule 7);
  - (d) the preliminary assessment period for the purposes of section 46A expires without the CMA having complied with the duty under subsection (2) of that section.
- (4) For the purpose of section 110A(7), the time when the Secretary of State finally decides whether to make a reference under section 45 or 62 is—
- (a) in a case falling within subsection (3)(a), the making of the reference;
  - (b) in a case falling within subsection (3)(b), the acceptance of the undertaking;
  - (c) in a case falling within subsection (3)(c), the making of the decision not to make the reference;
  - (d) in a case falling within subsection (3)(d), the expiry of the preliminary assessment period.
- (5) Paragraph 7(8) to (10) of Schedule 7 applies for deciding if and when a reference under section 45(2) or (3) or 62(2) is finally determined for the purpose of section 110A(8) as it applies for deciding those questions for the purpose of paragraph 7 of Schedule 7.
- (6) Paragraph 8(7) to (9) of Schedule 7 applies for deciding if and when a reference under section 45(4) or (5) or 62(3) is finally determined for the purpose of section 110A(8) as it applies for deciding those questions for the purpose of the definition of “relevant period” in paragraph 8(6) of that Schedule.”
- (12) In section 111 (penalties), in subsection (5)(b)—
- (a) in sub-paragraph (i), omit “or (as the case may be) the obstruction or delay is removed”, and
  - (b) in sub-paragraph (ii), for the words from “the day” to the end of the sub-paragraph substitute “the day which is the relevant day in the case in question for the purposes of section 110A”.

#### *Interim measures*

### **30 Interim measures: pre-emptive action: mergers**

- (1) Omit section 71 of the 2002 Act (initial undertakings: completed mergers).
- (2) Section 72 of that Act (initial enforcement orders: completed mergers) is amended as follows.
- (3) For subsection (1) substitute—
  - “(1) Subsection (2) applies where—



- (a) the CMA is considering whether to make a reference under section 22 or 33; and
  - (b) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.”
- (4) Omit subsection (3).
- (5) Before subsection (4) insert—
  - “(3A) Subsection (3B) applies where—
    - (a) subsection (1)(a) and (b) applies; and
    - (b) the CMA also has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
  - (3B) The CMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—
    - (a) do anything mentioned in subsection (2)(b) to (d);
    - (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”
- (6) After subsection (3B) insert—
  - “(3C) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.”
- (7) In subsection (6), in each of paragraphs (a) and (d), after “section 22” insert “or 33”.
- (8) After subsection (7) insert—
  - “(8) In this section “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the CMA’s decisions on the reference.”
- (9) In the heading for “completed mergers” substitute “completed or anticipated mergers”.
- (10) Schedule 7 (which makes further provision about interim measures under Part 3 of the 2002 Act) has effect.

### **31 Interim measures: financial penalties: mergers**

- (1) After section 94 of the 2002 Act (rights to enforce undertakings and orders under Part 3) insert—

#### **“94A Interim undertakings and orders under this Part: penalties**

- (1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.

- (2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed.
- (3) For the purposes of subsection (2), the Secretary of State may by order make provision for determining—
  - (a) when an enterprise is to be treated as controlled by a person; and
  - (b) the turnover (both in and outside the United Kingdom) of an enterprise.
- (4) An order under subsection (3)(b) may, in particular, make provision as to—
  - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).
- (6) The Secretary of State may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.
- (7) Sections 112 to 115 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 110(1), with the modification that any reference in those provisions to the CMA is to be read as a reference to the person who imposed the penalty under this section.
- (8) In this section—

“interim measure” means—

  - (a) an undertaking under section 80; or
  - (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;

“appropriate authority” means—

  - (a) in relation to an interim measure which is an order made by the Secretary of State under paragraph 2 of Schedule 7, the Secretary of State;
  - (b) in relation to any other interim measure, the CMA.

#### **94B Statement of policy in relation to powers under sections 94 and 94A**

- (1) The CMA shall prepare and publish a statement of policy in relation to the use of its powers under—
  - (a) section 94, insofar as they relate to interim measures; and
  - (b) section 94A.
- (2) The CMA shall, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under section 94A.

- (3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.
  - (4) The CMA shall consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
  - (5) A statement or revised statement of policy may not be published under this section unless the Secretary of State approves the statement.
  - (6) In this section, “interim measure” has the same meaning as in section 94A.”
- (2) In section 120 of that Act (review of decisions under Part 3), in subsection (2)(a), for “section 110(1) or (3)” substitute “section 94A(1) or 110(1) or (3)”.
  - (3) In section 124 of that Act (orders and regulations under Part 3)—
    - (a) in subsection (4), before “or 102” insert “, 94A(6)”, and
    - (b) in subsection (5), before “111(4) or (6),” insert “94A(3) or (6),”.

#### *Time-limits*

### **32 Time-limits etc: mergers**

- (1) In section 103 of the 2002 Act (duty of expedition in relation to references), in subsection (1), for the words from the beginning to “the OFT” substitute “In making any decision for the purposes of its functions of making and determining references under this Part, the CMA”.
- (2) Schedule 8 (which makes provision about time-limits in relation to the mergers reference regime under Part 3 of the 2002 Act) has effect.

## **CHAPTER 2**

### **MARKETS**

#### *Cross-market investigations*

### **33 Power of CMA to make cross-market references**

- (1) Section 131 of the 2002 Act (power to make market investigation references) is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) In a case where the feature or each of the features concerned falls within subsection (2)(b) or (c), a reference under subsection (1) may be made in relation to more than one market in the United Kingdom for goods or services.”
- (3) In subsection (4)(a), for “section 156(1)” substitute “section 156(A1) or (1)”.
- (4) In subsection (6)—
  - (a) before the definition of “market in the United Kingdom” insert—

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*Status: This is the original version (as it was originally enacted).*

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““cross-market reference” means a reference under this section which falls within subsection (2A) or a reference under section 132 which falls within subsection (3A) of that section (and see section 140A);”, and

(b) after the definition of “market investigation reference” insert—

““ordinary reference” means a reference under this section or section 132 which is not a cross-market reference (and see section 140A);”.

### **34 Ministerial power to make cross-market references**

(1) Section 132 of the 2002 Act (ministerial power to make market investigation references) is amended as follows.

(2) After subsection (3) insert—

“(3A) In a case where the feature or each of the features concerned falls within section 131(2)(b) or (c), a reference under subsection (3) may be made in relation to more than one market in the United Kingdom for goods or services.”

(3) In subsection (4), for “section 156(1)” substitute “section 156(A1) or (1)”.

(4) Schedule 9 (which contains amendments of Part 4 of the 2002 Act which are consequential on section 33 and this section) has effect.

#### *Public interest interventions*

### **35 Public interest interventions in markets investigations**

(1) Part 4 of the 2002 Act (market investigations) is amended as follows.

(2) Section 139 (power of Secretary of State to give public interest intervention notices) is amended as follows.

(3) For subsection (1) substitute—

“(A1) This section applies where—

- (a) the CMA has published a market study notice in relation to a matter; or
- (b) the CMA has begun the process of consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section.

(1) The Secretary of State may, within the permitted period, give a notice to the CMA if the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the matter.

(1A) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (a) of subsection (A1), is the period beginning with the publication of the market study notice and ending with—

- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter;

- (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter;
  - (c) the making of such a reference in relation to the matter; or
  - (d) in a case where the period permitted by section 131B for the preparation and publication by the CMA of the market study report in relation to the matter has expired and no such report has been prepared or published, the end of that period.
- (1B) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (b) of subsection (A1), is the period beginning with the date on which the CMA begins the process of consultation concerned and ending with—
- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter concerned;
  - (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter; or
  - (c) the making of such a reference in relation to the matter.”
- (4) In subsection (2)—
- (a) in the words before paragraph (a), after “may” insert “, within the permitted period,”;
  - (b) in paragraph (a)(i), after “131” insert “in relation to the matter”, and
  - (c) in paragraph (c), for “case” (in the second place where it occurs) substitute “proposal to accept the undertaking”.
- (5) After subsection (2) insert—
- “(2A) For the purposes of subsection (2), the permitted period is—
- (a) where the CMA publishes a notice under section 155(1), the period within which representations may be made in relation to the proposed undertaking (as to which, see section 155(2)(f));
  - (b) where the CMA publishes a notice under section 155(4), the period within which representations may be made in relation to the proposed modifications to the proposed undertaking (as to which, see section 155(5)(c)).”
- (6) For subsection (4) substitute—
- “(4) No more than one intervention notice shall be given under subsection (1) in relation to the same matter.
- (4A) An intervention notice shall not be given under subsection (2) in relation to a proposal to accept an undertaking if the proposal relates to a matter in respect of which an intervention notice under subsection (1) has already been given.
- (4B) No more than one intervention notice shall be given under subsection (2) in relation to the same proposed undertaking or in relation to proposed undertakings which do not differ from each other in any material respect.”
- (7) After subsection (4B) insert—
- “(4C) In this section, a reference to the acceptance of an undertaking shall, in a case where the CMA has accepted a group of undertakings under section 154, be

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treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of this section.”

(8) After section 140 insert—

**“140A Section 139(1) intervention notices: Secretary of State’s duty to refer**

- (1) This section applies where—
- (a) the CMA has prepared a market study report in relation to a matter within the period permitted by section 131B(4);
  - (b) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA would (but for this section) be required to publish the report; and
  - (c) the report contains the decision of the CMA that it should make an ordinary reference or a cross-market reference in relation to the matter under section 131.
- (2) This section also applies where—
- (a) the CMA has conducted a consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section;
  - (b) the CMA has decided that it should make an ordinary reference or a cross-market reference in relation to the matter concerned under section 131; and
  - (c) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA makes that decision.
- (3) The CMA—
- (a) shall not exercise the power under section 131 to refer the matter;
  - (b) in a case falling within subsection (1), shall not publish the market study report under section 131B(4) and shall instead, within the period mentioned in section 131B(4), give the report to the Secretary of State; and
  - (c) in a case falling within subsection (2), shall give to the Secretary of State a document containing—
    - (i) its decision and the reasons for its decision; and
    - (ii) such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision.
- (4) The Secretary of State shall decide whether any public interest consideration which was mentioned in the intervention notice is relevant to the matter in question.
- (5) Where the Secretary of State decides that there is no relevant public interest consideration—
- (a) the Secretary of State shall (in accordance with the CMA’s decision) make a reference in relation to the matter to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013; and

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- (b) the reference is to be treated for the purposes of this Part as an ordinary reference or (as the case may be) a cross-market reference made under section 131 in accordance with the requirements imposed by this Part.
- (6) Where the Secretary of State decides that there is one or more than one relevant public interest consideration, the Secretary of State shall (in accordance with the CMA’s decision) make a reference in relation to the matter to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (7) The Secretary of State shall specify in a reference made under subsection (6)—
  - (a) the relevant public interest consideration or considerations; and
  - (b) whether the reference is a restricted PI reference or a full PI reference (as to which, see sections 141 and 141A respectively).
- (8) Where the Secretary of State makes a full PI reference under subsection (6), the reference shall also specify whether the Secretary of State proposes to appoint a public interest expert under section 141B.
- (9) For the purposes of this Part, a reference under subsection (6) is to be treated—
  - (a) in a case where the decision of the CMA was that it should make an ordinary reference, as an ordinary reference;
  - (b) in a case where the decision of the CMA was that it should make a cross-market reference, as a cross-market reference.
- (10) In a case falling within subsection (1), the Secretary of State shall publish the market study report concerned at the same time as the Secretary of State makes a reference under this section.
- (11) In a case falling within subsection (2), the Secretary of State shall publish the document given to the Secretary of State by the CMA under subsection (3)(c), at the same time as the Secretary of State makes a reference under this section.
- (12) In this Part—
  - “full PI reference” means a reference made by the Secretary of State under subsection (6) which specifies that it is a full PI reference;
  - “restricted PI reference” means a reference made by the Secretary of State under subsection (6) which specifies that it is a restricted PI reference.”
- (9) After section 141 insert—

**“141A Full PI references: questions to be decided by CMA**

- (1) This section applies where the Secretary of State makes a full PI reference.
- (2) The CMA shall, on an ordinary reference, decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (3) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the

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feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

- (4) The CMA shall, if it has decided that there is an adverse effect on competition, decide whether, taking account only of any adverse effect on competition and the admissible public interest consideration or considerations concerned, any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.
- (5) The CMA shall, if it has decided that any such feature or combination of features operates or may be expected to operate against the public interest, also decide separately the following additional questions—
  - (a) whether action should be taken by the Secretary of State under section 147A for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned;
  - (b) whether the CMA should recommend the taking of other action by the Secretary of State, or action by persons other than itself and the Secretary of State, for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (6) The CMA shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148A(2))—
  - (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
  - (b) whether the CMA should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (7) In a case where the Secretary of State has appointed a public interest expert under section 141B in relation to a full PI reference, the CMA shall, in deciding the questions mentioned in subsections (4) and (5), have regard, in particular, to the views of the expert.
- (8) In deciding the questions mentioned in subsection (5), the CMA shall, in particular, have regard to—
  - (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
  - (b) any detrimental effects on customers so far as resulting from those effects.



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- (9) In deciding the questions mentioned in subsection (6), the CMA shall, in particular, have regard to—
  - (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned; and
  - (b) any detrimental effects on customers so far as resulting from it.
- (10) In deciding the questions mentioned in subsections (5) and (6), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.
- (11) In this section, “admissible public interest consideration” means any public interest consideration specified in the reference concerned and which the CMA is not under a duty to disregard.

#### **141B Full PI references: power of Secretary of State to appoint expert**

- (1) This section applies where the Secretary of State makes a full PI reference.
  - (2) The Secretary of State may appoint one or more than one person to advise the CMA on the questions mentioned in subsections (4) and (5) of section 141A in relation to the reference.
  - (3) A person so appointed shall be a person who appears to the Secretary of State to have particular knowledge of, or expertise in, matters relating to a public interest consideration specified in the reference.
  - (4) Each person so appointed is referred to in this Part as a “public interest expert”.
  - (5) The terms and conditions of appointment of a public interest expert (including, in particular, as to remuneration) are to be determined by the Secretary of State.
  - (6) Any appointment of a public interest expert under this section shall be made within the period of 2 months beginning with the date of the reference concerned.
  - (7) Before appointing a public interest expert the Secretary of State shall consult the chair of the CMA.”
- (10) Schedule 10 (which contains amendments of Part 4 of the 2002 Act which are consequential on or otherwise related to this section) has effect.

#### *Investigation powers*

### **36 Investigation powers: markets**

- (1) Section 174 of the 2002 Act (investigation powers) is amended as follows.
- (2) For subsections (1) and (2) substitute—
  - “(1) For the purposes of this section, the permitted purposes are the following—
    - (a) assisting the CMA in carrying out its functions under section 5 in relation to a matter in a case where it has published a market study notice;

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- (b) assisting the CMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 131 or 132 or possible reference under section 131;
  - (c) assisting the CMA or the Secretary of State in carrying out any functions, including enforcement functions, of the CMA or (as the case may be) the Secretary of State under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 140A(6) or possible reference under section 140A(5) or (6).
- (2) The CMA may exercise any of the powers in subsections (3) to (5) for a permitted purpose.”
- (3) In subsection (6), after “shall” insert “—
  - (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and
  - (b)”.
- (4) After subsection (6) insert—
 

“(6A) The CMA or any person nominated by it for the purpose may, for a permitted purpose, take evidence on oath and for that purpose may administer oaths.”
- (5) In subsection (7), for “the purpose mentioned in subsection (1)” substitute “a permitted purpose”.
- (6) After subsection (9) insert—
 

“(9A) In subsection (1), “enforcement functions” means—

  - (a) in relation to the CMA—
    - (i) functions conferred by virtue of section 164(2)(b) on the CMA by enforcement orders;
    - (ii) functions of the CMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
    - (iii) functions of the CMA under or by virtue of section 160 or 162 in relation to enforcement undertakings or enforcement orders;
  - (b) in relation to the Secretary of State—
    - (i) functions conferred by virtue of section 164(2)(b) on the Secretary of State by enforcement orders;
    - (ii) functions of the Secretary of State in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
    - (iii) functions of the Secretary of State under or by virtue of section 160 in relation to enforcement undertakings or enforcement orders.”
- (7) For the heading substitute “Attendance of witnesses and production of documents etc.”.

- (8) Schedule 11 (which makes provision about the enforcement of the powers under section 174 of the 2002 Act, as amended by this section, and which makes consequential amendments of that Act) has effect.

*Interim measures*

**37 Interim measures: pre-emptive action: markets**

- (1) Part 4 of the 2002 Act (market investigations) is amended as follows.
- (2) In section 157 (interim undertakings: Part 4), after subsection (2) insert—
- “(2A) Subsection (2B) applies where—
- (a) subsection (1)(a) to (c) applies; and
  - (b) the relevant authority has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
- (2B) The relevant authority may, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.”
- (3) After subsection (2B) of that section insert—
- “(2C) A person may, with the consent of the relevant authority, take action of a particular description where the action would otherwise constitute a contravention of an undertaking accepted under this section.”
- (4) In section 158 (interim orders: Part 4), after subsection (2) insert—
- “(2A) Subsection (2B) applies where—
- (a) subsection (1)(a) to (c) applies; and
  - (b) the relevant authority has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
- (2B) The relevant authority may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—
- (a) do anything mentioned in subsection (2)(b) to (d);
  - (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”
- (5) After subsection (2B) of that section insert—
- “(2C) A person may, with the consent of the relevant authority, take action of a particular description where the action would otherwise constitute a contravention of an order under this section.”

*Time-limits and procedure***38 Market studies and market investigations: consultation and time-limits**

Schedule 12 (which makes provision about consultation in relation to decisions whether to make a market investigation reference and about time-limits in relation to the conduct of market studies and the markets investigation reference regime under Part 4 of the 2002 Act) has effect.

**CHAPTER 3**

## ANTI-TRUST

*Investigation powers***39 Investigations: power to ask questions**

- (1) Part 1 of the Competition Act 1998 (“the 1998 Act”) (competition) is amended as follows.
- (2) After section 26 (powers when conducting investigations) insert—

**“26A Investigations: power to ask questions**

- (1) For the purposes of an investigation, the CMA may give notice to an individual who has a connection with a relevant undertaking requiring the individual to answer questions with respect to any matter relevant to the investigation—
  - (a) at a place specified in the notice, and
  - (b) either at a time so specified or on receipt of the notice.
- (2) The CMA must give a copy of the notice under subsection (1) to each relevant undertaking with which the individual has a current connection at the time the notice is given to the individual.
- (3) The CMA must take such steps as are reasonable in all the circumstances to comply with the requirement under subsection (2) before the time at which the individual is required to answer questions.
- (4) Where the CMA does not comply with the requirement under subsection (2) before the time mentioned in subsection (3), it must comply with that requirement as soon as practicable after that time.
- (5) A notice under subsection (1) must be in writing and must indicate—
  - (a) the subject matter and purpose of the investigation, and
  - (b) the nature of the offence created by section 44.
- (6) For the purposes of this section—
  - (a) an individual has a connection with an undertaking if he or she is or was—
    - (i) concerned in the management or control of the undertaking,
    - or

- (ii) employed by, or otherwise working for, the undertaking, and
  - (b) an individual has a current connection with an undertaking if, at the time in question, he or she is so concerned, is so employed or is so otherwise working.
- (7) In this section, a “relevant undertaking” means an undertaking whose activities are being investigated as part of the investigation in question.”
- (3) For the heading of section 26 substitute “Investigations: powers to require documents and information”.
- (4) Section 30A (use of statements in prosecution) is amended as follows.
- (5) The existing text becomes subsection (1).
- (6) In subsection (1), for “26 to 28A” substitute “26 and 27 to 28A”.
- (7) After that subsection insert—
- “(2) A statement by an individual in response to a requirement imposed by virtue of section 26A (a “section 26A statement”) may only be used in evidence against the individual—
    - (a) on a prosecution for an offence under section 44, or
    - (b) on a prosecution for some other offence in a case falling within subsection (3).
  - (3) A prosecution falls within this subsection if, in the proceedings—
    - (a) in giving evidence, the individual makes a statement inconsistent with the section 26A statement, and
    - (b) evidence relating to the section 26A statement is adduced, or a question relating to it is asked, by or on behalf of the individual.
  - (4) A section 26A statement may not be used in evidence against an undertaking with which the individual who gave the statement has a connection on a prosecution for an offence unless the prosecution is for an offence under section 44.
  - (5) For the purposes of subsection (4), an individual has a connection with an undertaking if he or she is or was—
    - (a) concerned in the management or control of the undertaking, or
    - (b) employed by, or otherwise working for, the undertaking.”

#### **40 Civil enforcement of investigation powers**

- (1) Part 1 of the 1998 Act (competition) is amended as follows.
- (2) After section 40 insert—

##### *“Civil sanctions*

#### **40A Penalties: failure to comply with requirements**

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 26,

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26A, 27, 28 or 28A, it may impose a penalty of such amount as it considers appropriate.

- (2) The amount may be—
  - (a) a fixed amount,
  - (b) an amount calculated by reference to a daily rate, or
  - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) A penalty imposed under subsection (1) must not—
  - (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
  - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify;
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (4) The fixed amount specified for the purposes of subsection (3)(a) or (c) may not exceed £30,000.
- (5) The amount per day specified for the purposes of subsection (3)(b) or (c) may not exceed £15,000.
- (6) In imposing a penalty by reference to a daily rate—
  - (a) no account is to be taken of any days before the service of the notice under section 112 of the Enterprise Act 2002 (as applied by subsection (9)) on the person concerned, and
  - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (7).
- (7) The days are—
  - (a) the day on which the requirement concerned is satisfied;
  - (b) the day on which the CMA makes a decision (within the meaning given by section 31(2)) or terminates the investigation in question without making such a decision;
  - (c) if the Secretary of State has made an order under section 31F(1)(b) imposing a time-limit on the making of such a decision, the latest day on which such a decision may be made as a result of the investigation in question.
- (8) Before making an order under subsection (3), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.
- (9) Sections 112 to 115 of the Enterprise Act 2002 (supplementary provisions about penalties) apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty imposed under section 110(1) of that Act.

#### **40B Statement of policy on penalties**

- (1) The CMA must prepare and publish a statement of policy in relation to the use of its powers under section 40A.
  - (2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 40A.
  - (3) The CMA may revise its statement of policy and, where it does so, it must publish the revised statement.
  - (4) The CMA must consult such persons as it considers appropriate when preparing or revising its statement of policy.
  - (5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
  - (6) In deciding whether and, if so, how to proceed under section 40A, the CMA must have regard to the statement of policy which was most recently published under this section at the time when the failure concerned occurred.”
- (3) Section 38 (guidance about appropriate level of penalties under section 36) is amended as follows.
  - (4) In subsection (1), after “under this Part” insert “in respect of an infringement of the Chapter 1 prohibition, the Chapter 2 prohibition, the prohibition in Article 81(1) or the prohibition in Article 82”.
  - (5) In subsection (1A), for “a penalty under this Part” substitute “such a penalty”.
  - (6) In subsection (8), after “under this Part” insert “in respect of an infringement of a kind mentioned in subsection (1)”.
  - (7) Section 42 (offences of failure to comply with requirements imposed in investigations and obstruction) is amended as follows.
  - (8) Omit subsections (1) to (4).
  - (9) In subsection (6), omit “(1) or”.

#### **41 Extension of powers to issue warrants to CAT**

Schedule 13 (which amends the 1998 Act to extend the powers under that Act to issue warrants to the Competition Appeal Tribunal) has effect.

#### **42 Part 1 of the 1998 Act: procedural matters**

- (1) Part 1 of the 1998 Act (competition) is amended as follows.
- (2) After section 25 (power to investigate) insert—

**“25A Power of CMA to publish notice of investigation**

- (1) Where the CMA decides to conduct an investigation it may publish a notice which may, in particular—
  - (a) state its decision to do so;
  - (b) indicate which of subsections (2) to (7) of section 25 the investigation falls under;
  - (c) summarise the matter being investigated;
  - (d) identify any undertaking whose activities are being investigated as part of the investigation;
  - (e) identify the market which is or was affected by the matter being investigated.
- (2) Section 57 does not apply to a notice under subsection (1) to the extent that it includes information other than information mentioned in that subsection.
- (3) Subsection (4) applies if—
  - (a) the CMA has published a notice under subsection (1) which identifies an undertaking whose activities are being investigated, and
  - (b) the CMA subsequently decides (without making a decision within the meaning given by section 31(2)) to terminate the investigation of the activities of the undertaking so identified.
- (4) The CMA must publish a notice stating that the activities of the undertaking in question are no longer being investigated.”
- (3) Schedule 9 (examples of provision that may be made in rules) is amended as follows.
- (4) After paragraph 1 insert—

*“1A Delegation of functions*

- 1A (1) Rules may provide for the exercise of a function of the CMA under this Part on its behalf—
  - (a) by one or more members of the CMA Board (see Part 2 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013);
  - (b) by one or more members of the CMA panel (see Part 3 of that Schedule to that Act);
  - (c) by one or more members of staff of the CMA;
  - (d) jointly by one or more of the persons mentioned in paragraph (a), (b) or (c).
- (2) Sub-paragraph (1) does not apply in relation to any function prescribed in regulations made under section 7(1) of the Civil Aviation Act 1982 (power for Secretary of State to prescribe certain functions of the Civil Aviation Authority which must not be performed on its behalf by any other person).”
- (5) After paragraph 13 insert—



*“13A Oral hearings: procedure*

- 13A (1) Rules may make provision as to the procedure to be followed by the CMA in holding oral hearings as part of an investigation.
- (2) Rules may, in particular, make provision as to the appointment of a person mentioned in sub-paragraph (3) who has not been involved in the investigation in question to—
- (a) chair an oral hearing, and
  - (b) prepare a report following the hearing and give it to the person who is to exercise on behalf of the CMA its function of making a decision (within the meaning given by section 31(2)) as a result of the investigation.
- (3) The persons are—
- (a) a member of the CMA Board;
  - (b) a member of the CMA panel;
  - (c) a member of staff of the CMA.
- (4) The report must—
- (a) contain an assessment of the fairness of the procedure followed in holding the oral hearing, and
  - (b) identify any other concerns about the fairness of the procedure followed in the investigation which have been brought to the attention of the person preparing the report.”

(6) After paragraph 13A insert—

*“13B Procedural complaints*

- 13B (1) Rules may make provision as to arrangements to be made by the CMA for dealing with complaints about the conduct by the CMA of an investigation.
- (2) Rules may, in particular, make provision as to—
- (a) the appointment of a person mentioned in sub-paragraph (3) who has not been involved in the investigation in question to consider any such complaint;
  - (b) the time-table for the consideration of any such complaint.
- (3) The persons are—
- (a) a member of the CMA Board;
  - (b) a member of the CMA panel;
  - (c) a member of staff of the CMA.”

(7) After paragraph 13B insert—

*“13C Settling cases*

- 13C Rules may make provision as to the procedure to be followed in a case where, during an investigation, one or more persons notify the CMA that

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they accept that there has been an infringement of a kind to which the investigation relates.”

*Interim measures and other sanctions*

**43 Threshold for interim measures**

In section 35 of the 1998 Act (interim measures), in subsection (2)(a), for “serious, irreparable damage” substitute “significant damage”.

**44 Penalties: guidance etc.**

(1) Part 1 of the 1998 Act (competition) is amended as follows.

(2) In section 36 (penalties), after subsection (7) insert—

“(7A) In fixing a penalty under this section the CMA must have regard to—

- (a) the seriousness of the infringement concerned, and
- (b) the desirability of deterring both the undertaking on whom the penalty is imposed and others from—
  - (i) entering into agreements which infringe the Chapter 1 prohibition or the prohibition in Article 81(1), or
  - (ii) engaging in conduct which infringes the Chapter 2 prohibition or the prohibition in Article 82.”

(3) In section 38 (guidance on level of penalties), in subsection (8), before “must have regard” insert “and the Tribunal”.

*Miscellaneous*

**45 Power for Secretary of State to impose time-limits on investigations etc.**

After section 31E of the 1998 Act insert—

**“31F Power for Secretary of State to impose time-limits on investigations etc.**

- (1) The Secretary of State may by order impose time-limits in relation to—
  - (a) the conduct by the CMA of investigations or investigations of a description specified in the order;
  - (b) the making by the CMA of decisions (within the meaning given by section 31(2)) as a result of investigations or investigations of such a description.
- (2) Before making an order under subsection (1), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.”

**46 Review of operation of Part 1 of 1998 Act**

(1) The Secretary of State must—

- (a) review the operation of Part 1 of the 1998 Act, and
  - (b) prepare and publish a report on the outcome of the review.
- (2) The report must be published before the end of the period of 5 years beginning with the day on which Part 1 of Schedule 5 (which transfers the functions of the Office of Fair Trading under Part 1 of the 1998 Act to the Competition and Markets Authority) comes into force.
- (3) The Secretary of State must lay the report before Parliament.

## CHAPTER 4

### CARTELS

#### 47 Cartel offence

- (1) Section 188 of the 2002 Act (cartel offence) is amended as follows.
- (2) In subsection (1), omit “dishonestly”.
- (3) Omit subsection (6).
- (4) After subsection (7) insert—
  - “(8) This section is subject to section 188A.”
- (5) After that section insert—

#### “188A Circumstances in which cartel offence not committed

- (1) An individual does not commit an offence under section 188(1) if, under the arrangements—
  - (a) in a case where the arrangements would (operating as the parties intend) affect the supply in the United Kingdom of a product or service, customers would be given relevant information about the arrangements before they enter into agreements for the supply to them of the product or service so affected,
  - (b) in the case of bid-rigging arrangements, the person requesting bids would be given relevant information about them at or before the time when a bid is made, or
  - (c) in any case, relevant information about the arrangements would be published, before the arrangements are implemented, in the manner specified at the time of the making of the agreement in an order made by the Secretary of State.
- (2) In subsection (1), “relevant information” means—
  - (a) the names of the undertakings to which the arrangements relate,
  - (b) a description of the nature of the arrangements which is sufficient to show why they are or might be arrangements of the kind to which section 188(1) applies,
  - (c) the products or services to which they relate, and
  - (d) such other information as may be specified in an order made by the Secretary of State.

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*Status: This is the original version (as it was originally enacted).*

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- (3) An individual does not commit an offence under section 188(1) if the agreement is made in order to comply with a legal requirement.
- (4) In subsection (3), “legal requirement” has the same meaning as in paragraph 5 of Schedule 3 to the Competition Act 1998.
- (5) A power to make an order under this section—
  - (a) is exercisable by statutory instrument,
  - (b) may be exercised so as to make different provision for different cases or different purposes, and
  - (c) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (6) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (6) After section 188A (as inserted by subsection (5) above) insert—

**“188B Defences to commission of cartel offence**

- (1) In a case where the arrangements would (operating as the parties intend) affect the supply in the United Kingdom of a product or service, it is a defence for an individual charged with an offence under section 188(1) to show that, at the time of the making of the agreement, he or she did not intend that the nature of the arrangements would be concealed from customers at all times before they enter into agreements for the supply to them of the product or service.
- (2) It is a defence for an individual charged with an offence under section 188(1) to show that, at the time of the making of the agreement, he or she did not intend that the nature of the arrangements would be concealed from the CMA.
- (3) It is a defence for an individual charged with an offence under section 188(1) to show that, before the making of the agreement, he or she took reasonable steps to ensure that the nature of the arrangements would be disclosed to professional legal advisers for the purposes of obtaining advice about them before their making or (as the case may be) their implementation.”
- (7) After section 190 of the 2002 Act insert—

**“190A Cartel offence: prosecution guidance**

- (1) The CMA must prepare and publish guidance on the principles to be applied in determining, in any case, whether proceedings for an offence under section 188(1) should be instituted.
- (2) The CMA may at any time issue revised or new guidance.
- (3) Guidance published by the CMA under this section is to be published in such manner as it considers appropriate.
- (4) In preparing guidance under this section the CMA must consult—
  - (a) the Director of the Serious Fraud Office;
  - (b) the Lord Advocate; and

- (c) such other persons as it considers appropriate.”
- (8) The amendments made by subsections (1) to (6) apply only in relation to agreements falling within section 188(1) of the 2002 Act which—
  - (a) are made after the commencement of this section, and
  - (b) relate to arrangements made or to be made after that commencement.

#### **48 Extension of power to issue warrants to CAT**

- (1) Section 194 of the 2002 Act (power to enter premises under a warrant) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “if he is satisfied” substitute “On an application made to it by the CMA or, in Scotland, the procurator fiscal, the appropriate body may issue a warrant if it is satisfied”.
- (3) After subsection (1) insert—
  - “(1A) In subsection (1), “appropriate body” means—
    - (a) in England and Wales and Northern Ireland, the High Court or the Competition Appeal Tribunal;
    - (b) in Scotland, the sheriff.”
- (4) After subsection (4) insert—
  - “(4A) An application for a warrant under this section must be made—
    - (a) in the case of an application to the High Court or the sheriff, in accordance with rules of court;
    - (b) in the case of an application to the Competition Appeal Tribunal, in accordance with rules made under section 15.”
- (5) In Schedule 4 to that Act, before paragraph 11, but after the cross-heading immediately preceding it, insert—
  - “10A (1) Tribunal rules may make provision as to proceedings on an application for a warrant under section 194 of this Act or section 28, 28A, 62, 62A, 63, 65G or 65H of the 1998 Act, including provision—
    - (a) for the Tribunal dealing with the proceedings to consist only of the President or a member of the panel of chairmen;
    - (b) as to the manner in which the proceedings are to be conducted, including provision—
      - (i) for such applications to be determined without a hearing;
      - (ii) in cases where there is a hearing, for it to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);
    - (c) as to the persons entitled to be heard in such proceedings (where there is a hearing);
    - (d) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
    - (e) as to the evidence which may be required or admitted and the extent to which it should be oral or written;

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- (f) allowing the Tribunal to fix time-limits with respect to any aspect of the proceedings and to extend any time-limit (before or after its expiry).
- (2) Paragraphs 2 to 8, and 11 to 17, of this Schedule do not apply in relation to the institution or conduct of proceedings for a warrant mentioned in sub-paragraph (1).”
- (6) In section 14 of that Act (constitution of Tribunal for particular proceedings and its decisions), in subsection (5), for “paragraph 18” substitute “paragraphs 10A(1)(a) and 18”.

## CHAPTER 5

### MISCELLANEOUS

#### *Enforcement orders: markets and mergers*

#### **49 Enforcement orders: monitoring compliance and determination of disputes**

In Schedule 8 to the 2002 Act (provision that may be contained in certain enforcement orders made under Part 3 or 4 of that Act), after paragraph 20B insert—

##### *“20C Monitoring of compliance and determination of disputes*

- 20C (1) An order may provide for the appointment of one or more than one person (referred to in this paragraph as an “appointee”) by the relevant authority or by such other persons as may be specified or described in the order to—
- (a) monitor compliance with such terms of the order as are so specified or described or terms of any directions given under the order;
  - (b) determine any dispute between persons who are subject to the order about what is required by any such terms.
- (2) An order made by virtue of this paragraph must make provision as to the terms of an appointee’s appointment.
- (3) A determination made by virtue of an order under this paragraph is binding on—
- (a) any person who is subject to the order;
  - (b) the relevant authority; and
  - (c) in the case where the relevant authority is the Secretary of State, the CMA.”

#### **50 Enforcement orders: provision of information**

- (1) Schedule 8 to the 2002 Act (provision that may be contained in certain enforcement orders made under Part 3 or 4 of that Act) is amended as follows.
- (2) Omit paragraph 15 (publication etc. of price information).
- (3) Paragraph 17 (publication etc. of other information) is amended as follows.

- (4) In sub-paragraph (1)—
- (a) in the words before paragraph (a), after “publish” insert “or otherwise notify”, and
  - (b) after paragraph (c) insert—
    - “(d) information in relation to prices of the goods or services supplied;
    - (e) such other information in relation to the goods or services supplied as the relevant authority considers appropriate.”
- (5) After sub-paragraph (1) insert—
- “(1A) An order may prohibit the publication or other notification of information falling within sub-paragraph (1)(a) to (e) by a person supplying goods or services.”
- (6) In paragraph 18 (supplementary provision about orders under paragraphs 15 and 17), omit “15 or”.

### *Concurrency*

## **51 Powers of sectoral regulators**

- (1) Section 54 of the 1998 Act (concurrent powers for regulators) is amended as follows.
- (2) In subsection (6)—
- (a) after “may” insert “—
    - (a) prescribe circumstances in which the CMA may decide that, in a particular case, it is to exercise Part 1 functions in respect of the case rather than a regulator;
    - (b)”,
 and
  - (b) after “Secretary of State” insert “, the CMA”.
- (3) After subsection (6) insert—
- “(6A) Where the regulations make provision as mentioned in subsection (6)(a), they must—
- (a) include provision requiring the CMA to consult the regulator concerned before making a decision that the CMA is to exercise Part 1 functions in respect of a particular case, and
  - (b) provide that, in a case where a regulator has given notice under section 31(1) that it proposes to make a decision (within the meaning given by section 31(2)), the CMA may only decide that it is to exercise Part 1 functions in respect of the case rather than the regulator if the regulator consents.”
- (4) After subsection (6A) insert—
- “(6B) The Secretary of State may by regulations make provision requiring arrangements to be made for the sharing of information between competent persons in connection with concurrent cases.

- (6C) For the purposes of subsection (6B), “a concurrent case” is a case in respect of which—
- (a) the CMA considers that Part 1 functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by both it and any regulator;
  - (b) any regulator considers that Part 1 functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by it.”
- (5) Schedule 14 (which makes provision governing the relationship between the powers of regulators under the 1998 Act and those under sector-specific legislation) has effect.

## **52 Power to remove concurrent competition functions of sectoral regulators**

- (1) The Secretary of State may make a sectoral regulator order if the Secretary of State considers that it is appropriate to do so for the purpose of promoting competition, within any market or markets in the United Kingdom, for the benefit of consumers.
- (2) A sectoral regulator order is an order that amends one or more enactments so as to remove from a sectoral regulator either or both of the following—
- (a) all the functions of the regulator under Part 1 of the 1998 Act that are exercisable concurrently by the regulator and the Competition and Markets Authority (“the CMA”) or that would be so exercisable but for provision made by virtue of section 54(5)(e) of that Act;
  - (b) all the functions of the regulator under Part 4 of the 2002 Act that are exercisable concurrently by the regulator and the CMA.
- (3) A sectoral regulator order may make such other amendments of any enactment as the Secretary of State considers appropriate in consequence of the removal of the functions.
- (4) Each of the following is a sectoral regulator—
- (a) the Office of Communications;
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Water Services Regulation Authority;
  - (d) the Office of Rail Regulation;
  - (e) the Northern Ireland Authority for Utility Regulation;
  - (f) the Civil Aviation Authority.
- (5) A sectoral regulator order may include transitional, transitory or saving provision.
- (6) A statutory instrument containing a sectoral regulator order is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section—
- “amend” includes repeal or revoke;
  - “enactment” includes—
- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,



- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (8) The references to the CMA in subsection (2) are to be read, in relation to any time before the commencement of section 25(3), as references to the Office of Fair Trading.

### **53 Orders under section 52: procedural requirements**

- (1) If the Secretary of State proposes to make a sectoral regulator order, the Secretary of State must carry out the first stage consultation.
- (2) The first stage consultation is consultation with—
- (a) the regulator whose functions would be removed by the order,
  - (b) the Competition and Markets Authority,
  - (c) where the regulator is the Office of Rail Regulation, the Scottish Ministers,
  - (d) where the regulator is the Northern Ireland Authority for Utility Regulation, the Department of Enterprise, Trade and Investment in Northern Ireland and the Department for Regional Development in Northern Ireland, and
  - (e) where the regulator is the Water Services Regulation Authority, the Welsh Ministers.
- (3) If (following the first stage consultation) the Secretary of State still proposes to make a sectoral regulator order, the Secretary of State must carry out the second stage consultation.
- (4) The second stage consultation is consultation with—
- (a) the persons consulted at the first stage,
  - (b) any bodies who appear to the Secretary of State to represent the interests of persons in respect of whom the functions that would be removed by the order are exercisable (“regulated providers”),
  - (c) any bodies who appear to the Secretary of State to represent the interests of persons who use the services supplied by regulated providers, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (5) The Secretary of State must give the following information to each of the persons consulted as part of the first stage or second stage consultation—
- (a) an explanation as to whether the Secretary of State is proposing to remove the functions of the regulator mentioned in subsection (2)(a) of section 52, the functions of the regulator mentioned in subsection (2)(b) of that section or both sets of functions;
  - (b) the reasons why the Secretary of State considers it appropriate to make the order.
- (6) The reference to the Competition and Markets Authority in subsection (2) is to be read, in relation to any time before the commencement of section 25(3), as a reference to the Office of Fair Trading.
- (7) In this section, “sectoral regulator order” has the same meaning as in section 52.

*Miscellaneous***54 Recovery of CMA’s costs in respect of price control references**

After section 193 of the Communications Act 2003 (reference of price control matters) insert—

**“193A Recovery of CMA’s costs in respect of price control references**

- (1) Where a determination is made on a price control matter referred by virtue of section 193, the CMA may make an order in respect of the costs incurred by it in connection with the reference (a “costs order”).
- (2) A costs order may require the payment to the CMA of some or all of those costs by such parties to the appeal which gave rise to the reference, other than OFCOM, as the CMA considers appropriate.
- (3) A costs order must—
  - (a) set out the total costs incurred by the CMA in connection with the reference, and
  - (b) specify the proportion of those costs to be paid by each party to the appeal in respect of whom the order is made.
- (4) In deciding on the proportion of costs to be paid by a party to the appeal the CMA must, in particular, consider—
  - (a) the extent to which the determination on the reference upholds OFCOM’s decision in relation to the price control matter in question,
  - (b) the extent to which the costs were attributable to the involvement in the appeal of the party, and
  - (c) the conduct of the party.
- (5) A costs order—
  - (a) must be made as soon as reasonably practicable after the making of the determination on the reference, but
  - (b) does not take effect unless the Tribunal, in deciding the appeal which gave rise to the reference, decides the price control matter which is the subject of the reference in accordance with the determination of the CMA (see section 193(6)).
- (6) In a case where the Tribunal decides the price control matter in question otherwise than as mentioned in subsection (5)(b), the CMA may make an order under this subsection in respect of the costs incurred by it in connection with the reference.
- (7) Subsections (2) to (4) apply in relation to an order under subsection (6) as they apply in relation to an order under subsection (1); but for that purpose the reference in subsection (4)(a) to the determination on the reference is to be read as a reference to the decision of the Tribunal mentioned in subsection (6).
- (8) An order under subsection (6) must be made as soon as reasonably practicable after the decision of the Tribunal mentioned in that subsection.

- (9) An amount payable to the CMA by virtue of an order made under this section is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (10) The CMA must pay any sums it receives by virtue of this section into the Consolidated Fund.
- (11) The functions of the CMA under this section, other than those under subsections (9) and (10), are to be carried out on behalf of the CMA by the group constituted by the chair of the CMA in relation to the reference in question.”

## **55 Disclosure etc. of information: offences**

In section 241 of the 2002 Act (disclosure of information for the purpose of exercise of statutory functions), after subsection (2) insert—

“(2A) Information disclosed under subsection (1) so that it is not made available to the public must not be used by the person to whom it is disclosed for any purpose other than that mentioned in subsection (1).”

## **56 Review of certain provisions of Chapters 1 and 2**

- (1) The Secretary of State must, before the end of each review period—
  - (a) carry out a review of the provisions of this Part mentioned in subsection (2), and
  - (b) prepare and publish a report setting out the conclusions of the review.
- (2) The provisions of this Part are—
  - (a) sections 29 and 36 and Schedule 11 (investigation powers: mergers and markets),
  - (b) section 30 and Schedule 7 (interim measures and pre-emptive action: mergers), and
  - (c) sections 32 and 38 and Schedules 8 and 12 (time-limits etc: mergers and markets).
- (3) The report must in particular—
  - (a) set out the objectives intended to be achieved by the provisions,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way which imposed less regulation.
- (4) The Secretary of State must lay the report before Parliament.
- (5) Each of the following is a review period for the purposes of this section—
  - (a) the period of 5 years beginning with the first day on which any of the provisions mentioned in subsection (2) comes into force (whether wholly or partly), and
  - (b) each successive period of 5 years.

**57 Minor and consequential amendments**

Schedule 15 (which makes minor and consequential amendments related to this Part) has effect.

**58 Interpretation**

In this Part—

“the 1998 Act” means the Competition Act 1998;

“the 2002 Act” means the Enterprise Act 2002.

**PART 5**

## REDUCTION OF LEGISLATIVE BURDENS

*Sunset and review***59 Sunset and review provisions**

(1) The Interpretation Act 1978 is amended as follows.

(2) After section 14 (implied power to amend) insert—

**“14A Power to include sunset and review provisions in subordinate legislation**

(1) This section applies where an Act confers a power or a duty on a person to make subordinate legislation except to the extent that—

- (a) the power or duty is exercisable by the Scottish Ministers, or
- (b) the power or duty is exercisable by any other person within devolved competence (within the meaning of the Scotland Act 1998).

(2) The subordinate legislation may include—

- (a) provision requiring the person to review the effectiveness of the legislation within a specified period or at the end of a specified period;
- (b) provision for the legislation to cease to have effect at the end of a specified day or a specified period;
- (c) if the power or duty is being exercised to amend other subordinate legislation, provision of the kind mentioned in paragraph (a) or (b) in relation to that other legislation.

(3) The provision that may be made by virtue of subsection (2)(a) includes provision requiring the person to consider whether the objectives which it was the purpose of the legislation to achieve remain appropriate and, if so, whether they could be achieved in another way.

(4) Subordinate legislation including provision of a kind mentioned in subsection (2) may make such provision generally or only in relation to specified provisions of the legislation or specified cases or circumstances.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Subordinate legislation including provision of a kind mentioned in subsection (2) may make transitional, consequential, incidental or supplementary provision or savings in connection with such provision.
- (6) In this section, “specified” means specified in the subordinate legislation.”
- (3) In paragraph 1 of Schedule 2, after the entry for section 11 insert—  
“Section 14A”.

### *Heritage planning etc*

## **60 Listed buildings in England: agreements and orders granting listed building consent**

- (1) The Planning (Listed Buildings and Conservation Areas) Act 1990 is amended as follows.
- (2) In Chapter 2 of Part 1, after section 26 insert—

### *“Buildings in England: heritage partnership agreements*

#### **26A Heritage partnership agreements**

- (1) A relevant local planning authority may make an agreement under this section (a “heritage partnership agreement”) with any owner of a listed building, or a part of such a building, situated in England.
- (2) Any of the following may also be a party to a heritage partnership agreement in addition to an owner and the relevant local planning authority—
  - (a) any other relevant local planning authority;
  - (b) the Secretary of State;
  - (c) the Commission;
  - (d) any person who has an interest in the listed building;
  - (e) any occupier of the listed building;
  - (f) any person involved in the management of the listed building;
  - (g) any other person who appears to the relevant local planning authority appropriate as having special knowledge of, or interest in, the listed building, or in buildings of architectural or historic interest more generally.
- (3) A heritage partnership agreement may contain provision—
  - (a) granting listed building consent under section 8(1) in respect of specified works for the alteration or extension of the listed building to which the agreement relates, and
  - (b) specifying any conditions to which the consent is subject.
- (4) The conditions to which listed building consent may be subject under subsection (3)(b) in respect of specified works are those that could be attached to listed building consent in respect of the works if consent were to be granted under section 16.

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*Status: This is the original version (as it was originally enacted).*

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- (5) If a heritage partnership agreement contains provision under subsection (3), nothing in sections 10 to 26 and 28 applies in relation to listed building consent for the specified works, subject to any regulations under section 26B(2)(f).
- (6) A heritage partnership agreement may also—
- (a) specify or describe works that would or would not, in the view of the parties to the agreement, affect the character of the listed building as a building of special architectural or historic interest;
  - (b) make provision about the maintenance and preservation of the listed building;
  - (c) make provision about the carrying out of specified work, or the doing of any specified thing, in relation to the listed building;
  - (d) provide for public access to the listed building and the provision to the public of associated facilities, information or services;
  - (e) restrict access to, or use of, the listed building;
  - (f) prohibit the doing of any specified thing in relation to the listed building;
  - (g) provide for a relevant public authority to make payments of specified amounts and on specified terms—
    - (i) for, or towards, the costs of any works provided for under the agreement; or
    - (ii) in consideration of any restriction, prohibition or obligation accepted by any other party to the agreement.
- (7) For the purposes of subsection (6)(g), each of the following, if a party to the agreement, is a relevant public authority—
- (a) the Secretary of State;
  - (b) the Commission;
  - (c) a relevant local planning authority.
- (8) In this section “specified” means specified or described in the heritage partnership agreement.
- (9) In this section and section 26B—
- “owner”, in relation to a listed building or a part of such a building, means a person who is for the time being —
- (a) the estate owner in respect of the fee simple in the building or part; or
  - (b) entitled to a tenancy of the building or part granted or extended for a term of years certain of which not less than seven years remain unexpired;
- “relevant local planning authority”, in relation to a listed building, means a local planning authority in whose area the building or any part of the building is situated.

### **26B Heritage partnership agreements: supplemental**

- (1) A heritage partnership agreement—
- (a) must be in writing;

- (b) must make provision for the parties to review its terms at intervals specified in the agreement;
  - (c) must make provision for its termination and variation;
  - (d) may relate to more than one listed building or part, provided that in each case a relevant local planning authority and an owner are parties to the agreement; and
  - (e) may contain incidental and consequential provisions.
- (2) The Secretary of State may by regulations make provision—
- (a) about any consultation that must take place before heritage partnership agreements are made or varied;
  - (b) about the publicity that must be given to heritage partnership agreements before or after they are made or varied;
  - (c) specifying terms that must be included in heritage partnership agreements;
  - (d) enabling the Secretary of State or any other person specified in the regulations to terminate by order a heritage partnership agreement or any provision of such an agreement;
  - (e) about the provision that may be included in an order made under regulations under paragraph (d), including provision enabling such orders to contain supplementary, incidental, transitory, transitional or saving provision;
  - (f) applying or reproducing, with or without modifications, any provision of sections 10 to 26 and 28 for the purposes of heritage partnership agreements;
  - (g) providing for any of the following, as they apply for the purposes of provisions mentioned in paragraph (f), to apply with any modifications consequential on provision made under that paragraph—
    - (i) sections 30 to 37;
    - (ii) sections 62 and 63;
    - (iii) Parts 3 and 4;
    - (iv) Schedule 3.
- (3) Regulations made under subsection (2)(a) may, in particular, include provision as to—
- (a) the circumstances in which consultation must take place;
  - (b) the types of listed building in respect of which consultation must take place;
  - (c) who must carry out the consultation;
  - (d) who must be consulted (including provision enabling the Commission to direct who is to be consulted in particular cases); and
  - (e) how the consultation must be carried out.
- (4) Listed building consent granted by a heritage partnership agreement (except so far as the agreement or regulations under subsection (2) otherwise provide) enures for the benefit of the building and of all persons for the time being interested in it.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Subject to subsection (4), a heritage partnership agreement cannot impose any obligation or liability, or confer any right, on a person who is not party to the agreement.
  - (6) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenant) does not apply to a heritage partnership agreement.”
- (3) After section 26B insert—

*“Buildings in England: orders granting listed building consent*

### **26C Listed building consent orders**

- (1) The Secretary of State may by order (a “listed building consent order”) grant listed building consent under section 8(1) in respect of works of any description for the alteration or extension of listed buildings of any description in England.
- (2) The consent may be granted subject to conditions specified in the order.
- (3) Without prejudice to the generality of subsection (2), the conditions that may be specified include any conditions subject to which listed building consent may be granted under section 16.
- (4) A listed building consent order may (without prejudice to section 17(2)) give the local planning authority power to require details of works to be approved by them, and may grant consent subject to conditions with respect to—
  - (a) the making of an application to the authority for a determination as to whether such approval is required, and
  - (b) the outcome of such an application or the way it is dealt with.
- (5) A listed building consent order may enable the Secretary of State or the local planning authority to direct that consent granted by the order does not apply—
  - (a) to a listed building specified in the direction;
  - (b) to listed buildings of a description specified in the direction;
  - (c) to listed buildings in an area specified in the direction.
- (6) An order may in particular make provision about the making, coming into force, variation and revocation of such a direction, including provision conferring powers on the Secretary of State in relation to directions by a local planning authority.
- (7) Nothing in sections 10 to 26 applies in relation to listed building consent granted by a listed building consent order; but that does not affect the application of sections 20, 21 and 22 in relation to an application for approval required by a condition to which consent is subject.

### **26D Local listed building consent orders**

- (1) A local planning authority for any area in England may by order (a “local listed building consent order”) grant listed building consent under section 8(1) in respect of works of any description for the alteration or extension of listed buildings.



- (2) Regulations under this Act may provide that subsection (1) does not apply to listed buildings of any description or in any area.
- (3) The consent granted by a local listed building consent order may relate—
  - (a) to all listed buildings in the area of the authority or any part of that area;
  - (b) to listed buildings of any description in that area or any part of that area.
- (4) The consent may be granted subject to conditions specified in the order.
- (5) Without prejudice to the generality of subsection (4), the conditions that may be specified include any subject to which listed building consent may be granted under section 16.
- (6) A local listed building consent order may enable the local planning authority to direct that the consent granted by the order in respect of works of any description does not apply—
  - (a) to a listed building specified in the direction;
  - (b) to listed buildings of a description specified in the direction;
  - (c) to listed buildings in an area specified in the direction.
- (7) An order may in particular make provision about the making, coming into force, variation and revocation of such a direction, including provision conferring powers on the Secretary of State.
- (8) Nothing in sections 10 to 26 applies in relation to listed building consent granted by a local listed building consent order; but that does not affect the application of sections 20, 21 and 22 in relation to an application for approval required by a condition to which consent is subject.
- (9) Schedule 2A makes provision in connection with local listed building consent orders.

### **26E Powers of Secretary of State in relation to local orders**

- (1) At any time before a local listed building consent order is adopted by a local planning authority the Secretary of State may direct that the order (or any part of it) is not to be adopted without the Secretary of State's approval.
- (2) If the Secretary of State gives a direction under subsection (1)—
  - (a) the authority must not take any step in connection with the adoption of the order until they have submitted the order or the part to the Secretary of State and the Secretary of State has decided whether to approve it;
  - (b) the order has no effect unless it (or the part) has been approved by the Secretary of State.
- (3) In considering an order or part submitted under subsection (2)(a) the Secretary of State may take account of any matter the Secretary of State thinks relevant.
- (4) It is immaterial whether any such matter was taken account of by the local planning authority.

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- (5) The Secretary of State—
  - (a) may approve or reject an order or part of an order submitted under subsection (2)(a);
  - (b) must give reasons for that decision.
- (6) The Secretary of State—
  - (a) may at any time before a local listed building consent order is adopted by the local planning authority, direct them to modify it in accordance with the direction;
  - (b) must give reasons for any such direction.
- (7) The local planning authority—
  - (a) must comply with a direction under subsection (6);
  - (b) must not adopt the order unless the Secretary of State gives notice of being satisfied that they have complied with the direction.
- (8) The Secretary of State—
  - (a) may at any time by order revoke a local listed building consent order if of the opinion that it is expedient to do so;
  - (b) must give reasons for doing so.
- (9) The Secretary of State—
  - (a) must not make an order under subsection (8) without consulting the local planning authority;
  - (b) if proposing to make such an order, must serve notice on the local planning authority.
- (10) A notice under subsection (9)(b) must specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (11) The Secretary of State must give the authority such an opportunity if they require it within the period specified in the notice.

### **26F Considerations in making orders**

- (1) In considering whether to make a listed building consent order or local listed building consent order the Secretary of State or local planning authority must have special regard to the desirability of preserving—
  - (a) listed buildings of a description to which the order applies,
  - (b) their setting, or
  - (c) any features of special architectural or historic interest which they possess.
- (2) Before making a listed building consent order the Secretary of State must consult the Commission.

### **26G Effect of revision or revocation of order on incomplete works**

- (1) A listed building consent order or local listed building consent order may include provision permitting the completion of works if—

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- (a) listed building consent is granted by the order in respect of the works, and
  - (b) the listed building consent is withdrawn after the works are started but before they are completed.
- (2) Listed building consent granted by an order is withdrawn—
- (a) if the order is revoked;
  - (b) if the order is varied or (in the case of a local listed building consent order) revised so that it ceases to grant listed building consent in respect of the works or materially changes any condition or limitation to which the grant of listed building consent is subject;
  - (c) if a direction applying to the listed building is issued under powers conferred under section 26C(5) or 26D(6).”
- (4) After section 28 insert—

**“28A Compensation where consent formerly granted by order is granted conditionally or refused**

- (1) Section 28 also has effect (subject to subsections (2) and (3)) where—
- (a) listed building consent granted by a listed building consent order or a local listed building consent order is withdrawn (whether by the revocation or amendment of the order or by the issue of a direction), and
  - (b) on an application for listed building consent made within the prescribed period after the withdrawal, consent for works formerly authorised by the order is refused or is granted subject to conditions other than those imposed by the order.
- (2) Section 28 does not have effect by virtue of subsection (1) if—
- (a) the works authorised by the order were started before the withdrawal, and
  - (b) the order included provision in pursuance of section 26G permitting the works to be completed after the withdrawal.
- (3) Section 28 does not have effect by virtue of subsection (1) if—
- (a) notice of the withdrawal was published in the prescribed manner and within the prescribed period before the withdrawal, and
  - (b) the works authorised by the order were not started before the notice was published.
- (4) Where section 28 has effect by virtue of subsection (1), references in section 28(2) and (3) to the revocation or modification of listed building consent are references to the withdrawal of the listed building consent by revocation or amendment of the order or by issue of the direction.”
- (5) Schedule 16 (which inserts Schedule 2A to the Planning (Listed Buildings and Conservation Areas) Act 1990) has effect.

**61 Listed buildings in England: certificates of lawfulness**

In the Planning (Listed Buildings and Conservation Areas) Act 1990 after section 26G insert—

*“Buildings in England: certificates of lawfulness*

**26H Certificate of lawfulness of proposed works**

- (1) A person who wishes to ascertain whether proposed works for the alteration or extension of a listed building in England would be lawful may make an application to the local planning authority specifying the building and describing the works.
- (2) For the purposes of this section works would be lawful if they would not affect the character of the listed building as a building of special architectural or historic interest.
- (3) If on an application under this section the local planning authority are provided with information satisfying them that the works described in the application would be lawful at the time of the application, they must issue a certificate to that effect; and in any other case they must refuse the application.
- (4) A certificate under this section must—
  - (a) specify the building to which it relates;
  - (b) describe the works concerned;
  - (c) give the reasons for determining that the works would be lawful; and
  - (d) specify the date of issue of the certificate.
- (5) Works for which a certificate is issued under this section are to be conclusively presumed to be lawful, provided that—
  - (a) they are carried out within 10 years beginning with the date of issue of the certificate, and
  - (b) the certificate is not revoked under section 26I.

**26I Certificates under section 26H: supplementary**

- (1) An application for a certificate under section 26H must be made in such manner as may be prescribed by regulations under this Act.
- (2) An application must include such particulars, and be verified by such evidence, as may be required—
  - (a) by the regulations,
  - (b) by any directions given under the regulations, or
  - (c) by the local planning authority.
- (3) Regulations under this Act may make provision about how applications for a certificate under section 26H are to be dealt with by local planning authorities.
- (4) In particular, regulations may provide for requiring the authority—
  - (a) to give to any applicant within a prescribed period such notice as may be prescribed as to the manner in which the application has been dealt with; and
  - (b) to give to the Secretary of State, and to such other persons as may be prescribed, prescribed information with respect to such applications

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made to the authority, including information as to the manner in which any application has been dealt with.

- (5) A certificate under section 26H may be issued--
- (a) for the whole or part of the listed building specified in the application; and
  - (b) for all or part of the works described in the application;
- and must be in such form as may be prescribed.
- (6) A local planning authority may revoke a certificate under section 26H if, on the application for the certificate—
- (a) a statement was made or document used which was false in a material particular; or
  - (b) any material information was withheld.
- (7) Regulations under this section may make provision for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.

### **26J Offences**

- (1) A person is guilty of an offence if, for the purpose of procuring a particular decision on an application (whether or not by that person) for the issue of a certificate under section 26H, the person—
- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
  - (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
  - (c) with intent to deceive, withholds any material information.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.
- (3) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under subsection (1) whenever laid.

### **26K Appeals against refusal or failure to give decision on application**

- (1) Where an application is made to a local planning authority for a certificate under section 26H and—
- (a) the application is refused or is refused in part, or
  - (b) the authority do not give notice to the applicant of their decision on the application within such period as may be prescribed under section 26I or within such extended period as may at any time be agreed in writing between the applicant and the authority,
- the applicant may by notice appeal to the Secretary of State.
- (2) A notice of appeal under this section—

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- (a) must be served within such time and in such manner as may be prescribed;
  - (b) must be accompanied by such information as may be prescribed.
- (3) The time prescribed for the service of a notice of appeal under this section must not be less than—
- (a) 28 days from the date of notification of the decision on the application; or
  - (b) in the case of an appeal under subsection (1)(b), 28 days from—
    - (i) the end of the period prescribed as mentioned in subsection (1)(b), or
    - (ii) as the case may be, the extended period mentioned in subsection (1)(b).
- (4) On an appeal under this section, the Secretary of State must grant the appellant a certificate under section 26H or, in the case of a refusal in part, modify the certificate granted by the authority on the application, if and so far as the Secretary of State is satisfied—
- (a) in the case of an appeal under subsection (1)(a), that the authority’s refusal is not well-founded, or
  - (b) in the case of an appeal under subsection (1)(b), that if the authority had refused the application their refusal would not have been well-founded.
- (5) If and so far as the Secretary of State is satisfied that the authority’s refusal is or, as the case may be, would have been well-founded, the Secretary of State must dismiss the appeal.
- (6) Where the Secretary of State grants a certificate under section 26H on an appeal under this section, the Secretary of State must give notice to the local planning authority of that fact.
- (7) References in this section to a refusal of an application in part include a modification or substitution of the description in the application of the works concerned.
- (8) Schedule 3 applies to an appeal under this section.”

## 62 Osborne estate

- (1) Section 1 of the Osborne Estate Act 1902 is amended as follows.
- (2) In subsection (3) (land to be managed in accordance with Crown Lands Act 1851) omit “as if it had been committed to their management under section twenty-two of the Crown Lands Act, 1851”.
- (3) Omit subsection (4)(b) (part of house and grounds to be used for the benefit of officers and their families).
- (4) Omit the following provisions (which relate to land no longer forming part of the Osborne estate)—
  - (a) in subsection (3) the words from “and the part” to “Barton House and grounds”;
  - (b) in subsection (4) the words from “And the Commissioners” to the end.

- (5) The Osborne Estate Act 1914 (which gives power to extend the classes of persons who may benefit under section 1(4)(b) of the Osborne Estate Act 1902) is repealed.

### **63 Heritage planning regulation**

Schedule 17 (heritage planning regulation) has effect.

#### *Equality Acts*

### **64 Commission for Equality and Human Rights**

- (1) In the Equality Act 2006 omit—
- (a) sections 10(1) and (4) to (8) and 19 (groups);
  - (b) section 27 (conciliation).
- (2) In section 12(4)(b) of that Act (monitoring progress: reports every three years) for “three” substitute “five”.
- (3) The following subsections make further amendments to the Equality Act 2006.
- (4) In section 7(3) (Scotland: human rights) omit “or 10”.
- (5) In section 9(4) and (5) (human rights) omit “or 10”.
- (6) In section 12 (monitoring progress)—
- (a) in subsection (1)(a) for “the aim specified in section 3” substitute “the duties specified in sections 8 and 9”;
  - (b) in subsection (1)(b) for “the development of the society described in section 3” substitute “changes in society that are consistent with those duties”.
- (7) In section 13(1) (information, advice etc) for “to 10” substitute “and 9”.
- (8) In section 16(1) (inquiries) for “, 9 and 10” substitute “and 9”.
- (9) In section 17(1) (grants) for “to 10” substitute “and 9”.
- (10) In section 39(4) (orders and regulations) for “10(6), 15(6) or 27(10)” substitute “15(6)”.
- (11) In Schedule 1 (the Commission)—
- (a) in paragraph 39 omit “or 27”;
  - (b) omit paragraph 52(1)(a)(v) and (vi) and (b);
  - (c) for paragraph 52(3)(b) substitute—
    - “(b) section 8, in so far as it relates to disability, and”;
  - (d) in paragraph 52(3)(c) omit “, 27(2) and (3)”.
- (12) The following subsections amend the Equality Act 2010 in consequence of subsection (1).
- (13) In section 118 (time limits)—
- (a) in subsection (2) omit “or (4)”;
  - (b) omit subsection (4).
- (14) In Schedule 17 (disabled pupils: enforcement) omit—

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- (a) paragraph 4(2) (time limits where dispute referred to conciliation under section 27 of the Equality Act 2006);
- (b) in paragraph 4(2A), “or for conciliation in pursuance of arrangements under section 27 of the Equality Act 2006”.

**65 Equality Act 2010: third party harassment of employees**

In section 40 of the Equality Act 2010 (employees and applicants: harassment) omit subsections (2) to (4).

**66 Equality Act 2010: obtaining information for proceedings**

- (1) In the Equality Act 2010, omit section 138 (obtaining information, etc).
- (2) That does not affect section 138 for the purposes of proceedings that relate to a contravention occurring before this section comes into force.

*Regulatory Enforcement and Sanctions Act 2008*

**67 Primary authorities**

- (1) Section 22 of the Regulatory Enforcement and Sanctions Act 2008 (scope of Part 2) is amended in accordance with subsections (2) to (5).
- (2) Before subsection (1), insert—
  - “(A1) This Part applies in relation to a person if the Secretary of State is satisfied that the person is within subsection (1) or (1A).”
- (3) In subsection (1), for the words from “This Part” to “a person” substitute “A person is within this subsection if—
  - (a) the person”.
- (4) After subsection (1) insert—
  - “(1A) A person (P) is within this subsection if each of the conditions in subsection (1B) is met.
  - (1B) The conditions are—
    - (a) that P carries on an activity in relation to which a local authority exercises a relevant function;
    - (b) that the effect of arrangements made by P with any organisation or other person is that P’s approach to compliance, in respect of the relevant function, is one that is shared with another person (Q) who carries on the activity;
    - (c) that—
      - (i) at least one of P and Q carries on the activity in the area of two or more local authorities, or
      - (ii) Q carries on the activity in the area of a local authority in which P does not carry on the activity.”
  - (5) For subsection (2) substitute—



- “(2) In this Part, references to “the regulated person” are to a person to whom this Part applies.
- (3) The Secretary of State may from time to time publish guidance about matters likely to be taken into account for the purposes of subsection (1B)(b).
- (4) The guidance may be published in such manner as the Secretary of State considers appropriate.”
- (6) In section 24 of that Act, after subsection (6) insert—
  - “(7) References in this Part to “the relevant function”, in relation to the regulated person, are to the relevant function by reference to which the Secretary of State is satisfied that the person is within section 22(1) or (1A).”
- (7) In section 26(2) of that Act (nomination of primary authorities), for “The Secretary of State” substitute “Where the Secretary of State has been satisfied that the regulated person is within section 22(1), the Secretary of State”.

## **68 Inspection plans**

- (1) Section 30 of the Regulatory Enforcement and Sanctions Act 2008 (inspection plans) is amended as follows.
- (2) After subsection (3) insert—
  - “(3A) An inspection plan may require a local authority other than the primary authority, on exercising the function of inspection in relation to the regulated person, to provide the primary authority with a report on its exercise of the function.”
- (3) In subsection (7)—
  - (a) for the words from the beginning to “exercising” substitute “Where the primary authority exercises”;
  - (b) after “regulated person” insert “, it”.
- (4) After subsection (7) insert—
  - “(7A) A local authority other than the primary authority may not exercise the function of inspection in relation to the regulated person otherwise than in accordance with a plan that has been brought to its notice under subsection (6), unless—
    - (a) it has notified the primary authority in writing of the way in which it proposes to exercise the function in relation to the regulated person, and
    - (b) the primary authority has notified the local authority in writing that it consents to the authority’s exercising the function in that way.
  - (7B) Subsection (7C) applies if a primary authority that has been notified by a local authority as described in subsection (7A)(a) fails to notify that authority in writing, within the notification period, whether it consents to the authority’s exercising the function of inspection as described in the notification.

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- (7C) The primary authority is to be treated for the purposes of this section, following the expiry of the notification period, as having given the notification of consent described in subsection (7A)(b).
- (7D) The “notification period”, in subsections (7B) and (7C), is the period of five working days beginning with the first working day after the day on which the notification referred to in subsection (7A)(a) is received by the primary authority.
- (7E) Where an inspection plan includes a requirement of the type described in subsection (3A), a local authority exercising the function of inspection in relation to the regulated person must provide a report to the primary authority in accordance with the requirement.”
- (5) Omit subsection (8).
- (6) In subsection (9) for “(8)” substitute “(7A)(a)”.
- (7) After subsection (9) insert—
- “(9A) A primary authority may, with the consent of the Secretary of State, revoke a plan made by it under this section.
- (9B) If a primary authority revokes a plan under subsection (9A), it must notify the other local authorities with the function of inspection that the plan is no longer in effect.”
- (8) In subsection (10), for “(9)” substitute “(9B)”.
- (9) After subsection (10) insert—
- “(11) In subsection (7D), “working day” means a day other than—
- (a) a Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in—
    - (i) the part of the United Kingdom where the primary authority is, or
    - (ii) (if different) the part of the United Kingdom where the authority is that has given the notification referred to in subsection (7A)(a).”

### *Miscellaneous*

## **69 Civil liability for breach of health and safety duties**

- (1) Section 47 of the Health and Safety at Work etc. Act 1974 (civil liability) is amended as set out in subsections (2) to (7).
- (2) In subsection (1), omit paragraph (b) (including the “or” at the end of that paragraph).
- (3) For subsection (2) substitute—

- “(2) Breach of a duty imposed by a statutory instrument containing (whether alone or with other provision) health and safety regulations shall not be actionable except to the extent that regulations under this section so provide.
- (2A) Breach of a duty imposed by an existing statutory provision shall not be actionable except to the extent that regulations under this section so provide (including by modifying any of the existing statutory provisions).
- (2B) Regulations under this section may include provision for—
- (a) a defence to be available in any action for breach of the duty mentioned in subsection (2) or (2A);
  - (b) any term of an agreement which purports to exclude or restrict any liability for such a breach to be void.”
- (4) In subsection (3), omit the words from “, whether brought by virtue of subsection (2)” to the end.
- (5) In subsection (4)—
- (a) for “and (2)” substitute “, (2) and (2A)”, and
  - (b) for “(3)” substitute “(2B)(a)”.
- (6) Omit subsections (5) and (6).
- (7) After subsection (6) insert—
- “(7) The power to make regulations under this section shall be exercisable by the Secretary of State.”
- (8) Where, on the commencement of this section, there is in force an Order in Council made under section 84(3) of the Health and Safety at Work etc. Act 1974 that applies to matters outside Great Britain any of the provisions of that Act that are amended by this section, that Order is to be taken as applying those provisions as so amended.
- (9) The amendments made by this section do not apply in relation to breach of a duty which it would be within the legislative competence of the Scottish Parliament to impose by an Act of that Parliament.
- (10) The amendments made by this section do not apply in relation to breach of a duty where that breach occurs before the commencement of this section.

## 70 Estate agency work

In section 1 of the Estate Agents Act 1979 (estate agency work), for subsection (4) substitute—

- “(4) This Act does not apply to the following things when done by a person who does no other things which fall within subsection (1) above—
- (a) publishing advertisements or disseminating information;
  - (b) providing a means by which—
    - (i) a person who wishes to acquire or dispose of an interest in land can, in response to such an advertisement or dissemination of information, make direct contact with a person who wishes to dispose of or, as the case may be, acquire an interest in land;

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(ii) the persons mentioned in sub-paragraph (i) can continue to communicate directly with each other.”

## **71 Bankruptcy applications: determination by adjudicators**

(1) In Part 14 of the Insolvency Act 1986 (public administration (England and Wales)), before section 399 and the cross-heading which precedes it insert—

### *“Adjudicators*

#### **398A Appointment etc of adjudicators and assistants**

- (1) The Secretary of State may appoint persons to the office of adjudicator.
  - (2) A person appointed under subsection (1)—
    - (a) is to be paid out of money provided by Parliament such salary as the Secretary of State may direct,
    - (b) holds office on such other terms and conditions as the Secretary of State may direct, and
    - (c) may be removed from office by a direction of the Secretary of State.
  - (3) A person who is authorised to act as an official receiver may not be appointed under subsection (1).
  - (4) The Secretary of State may appoint officers of the Secretary of State’s department to assist adjudicators in the carrying out of their functions.”
- (2) In Part 9 of that Act (bankruptcy), before Chapter 1 insert the Chapter set out in Schedule 18 (adjudicators: bankruptcy applications by debtors and bankruptcy orders).
- (3) Schedule 19 (adjudicators: minor and consequential amendments) has effect.

## **72 Abolition of Agricultural Wages Board and related English bodies**

- (1) The Agricultural Wages Board for England and Wales is abolished.
- (2) Every agricultural wages committee for an area in England is abolished.
- (3) Every agricultural dwelling-house advisory committee for an area in England is abolished.
- (4) Schedule 20 (abolition of Agricultural Wages Board and related English bodies: consequential provision) has effect.

## **73 Unnecessary regulation: miscellaneous**

Schedule 21 (unnecessary regulation: miscellaneous) has effect.

## PART 6

### MISCELLANEOUS AND GENERAL

#### *Copyright and rights in performances*

#### **74 Exploitation of design derived from artistic work**

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) Omit section 52 (effect of exploitation of design derived from artistic work).
- (3) In consequence omit the following—
  - (a) section 79(4)(g);
  - (b) in Schedule 1 paragraph 20.

#### **75 Penalties under provision amending exceptions: copyright and rights in performances**

Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (limitation on criminal penalties) does not apply for the purposes of provision under section 2(2) of that Act amending—

- (a) Chapter 3 of Part 1 of the Copyright, Designs and Patents Act 1988 (acts permitted in relation to copyright works), or
- (b) Schedule 2 to that Act (rights in performances: permitted acts).

#### **76 Power to reduce duration of copyright in transitional cases**

- (1) Section 170 of the Copyright, Designs and Patents Act 1988 (transitional provisions and savings) is amended as follows.
- (2) At the beginning insert “(1)”.
- (3) At the end insert—
  - “(2) The Secretary of State may by regulations amend Schedule 1 to reduce the duration of copyright in existing works which are unpublished, other than photographs or films.
- (3) The regulations may provide for the copyright to expire—
  - (a) with the end of the term of protection of copyright laid down by Directive [2006/116/EC](#) or at any later time;
  - (b) subject to that, on the commencement of the regulations or at any later time.
- (4) “Existing works” has the same meaning as in Schedule 1.
- (5) Regulations under subsection (2) may—
  - (a) make different provision for different purposes;
  - (b) make supplementary or transitional provision;
  - (c) make consequential provision, including provision amending any enactment or subordinate legislation passed or made before that subsection comes into force.

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- (6) The power to make regulations under subsection (2) is exercisable by statutory instrument.
- (7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.”

## **77 Licensing of copyright and performers’ rights**

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 116 (licensing schemes and licensing bodies) after subsection (4) insert—
  - “(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”
- (3) After section 116 insert—

### *“Orphan works licensing and extended collective licensing*

#### **116A Power to provide for licensing of orphan works**

- (1) The Secretary of State may by regulations provide for the grant of licences in respect of works that qualify as orphan works under the regulations.
- (2) The regulations may—
  - (a) specify a person or a description of persons authorised to grant licences, or
  - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences
- (3) The regulations must provide that, for a work to qualify as an orphan work, it is a requirement that the owner of copyright in it has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations may provide for the granting of licences to do, or authorise the doing of, any act restricted by copyright that would otherwise require the consent of the missing owner.
- (5) The regulations must provide for any licence—
  - (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

#### **116B Extended collective licensing**

- (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant

copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.

- (2) An authorisation must specify—
  - (a) the types of work to which it applies, and
  - (b) the acts restricted by copyright that the licensing body is authorised to license.
- (3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.
- (5) In this section “copyright licences” has the same meaning as in section 116.
- (6) Nothing in this section applies in relation to Crown copyright or Parliamentary copyright.

#### **116C General provision about licensing under sections 116A and 116B**

- (1) This section and section 116D apply to regulations under sections 116A and 116B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
  - (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
  - (a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 116B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;
  - (e) for the payment of fees to cover administrative expenses.

**116D Regulations under sections 116A and 116B**

- (1) The power to make regulations includes power—
    - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
    - (b) to make transitional, transitory or saving provision;
    - (c) to make different provision for different purposes.
  - (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
  - (3) Regulations may make provision by reference to guidance issued from time to time by any person.
  - (4) The power to make regulations is exercisable by statutory instrument.
  - (5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (4) Schedule 22 (which inserts Schedule A1 to the Copyright, Designs and Patents Act 1988 and makes provision in relation to performers’ rights corresponding to provision made by this section in relation to copyright) has effect.

**78 Penalties under provision implementing Directive on term of protection**

Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (limitation on criminal penalties) does not apply for the purposes of provision under section 2(2) of that Act implementing [Directive 2011/77/EU](#) amending [Directive 2006/116/EC](#) on the term of protection of copyright and certain related rights.

*Payments to directors of quoted companies***79 Members’ approval of directors’ remuneration policy**

- (1) In section 421 of the Companies Act 2006 (contents of directors’ remuneration report) after subsection (2) insert—
  - “(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report.”
- (2) After section 422 of that Act (approval and signing of directors’ remuneration report) insert—



**“422A Revisions to directors’ remuneration policy**

- (1) The directors’ remuneration policy contained in a company’s directors’ remuneration report may be revised.
  - (2) Any such revision must be approved by the board of directors.
  - (3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.
  - (4) Regulations under section 421(1) may make provision as to—
    - (a) the information that must be contained in a document setting out a revised directors’ remuneration policy, and
    - (b) how information is to be set out in the document.
  - (5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors’ remuneration report.
  - (6) In this section, “directors’ remuneration policy” means the policy of a company with respect to the matters mentioned in section 421(2A).”
- (3) In section 439 of that Act (quoted companies: members’ approval of directors’ remuneration report), in subsection (1), at the end insert “other than the part containing the directors’ remuneration policy (as to which see section 439A).”
- (4) After that section insert—

**“439A Quoted companies: members’ approval of directors’ remuneration policy**

- (1) A quoted company must give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors’ remuneration policy—
  - (a) at the accounts meeting held in the first financial year which begins on or after the day on which the company becomes a quoted company, and
  - (b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.
- (2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors’ remuneration policy if—
  - (a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and
  - (b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.
- (3) Subsection (2) does not apply in relation to a quoted company before the first meeting in relation to which it gives notice under subsection (1).

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- (4) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.
- (5) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.
- (6) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for “accounts meeting” there were substituted “general meeting”.
- (7) For the purposes of this section, the relevant directors’ remuneration policy is—
  - (a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors’ remuneration report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;
  - (b) in a case where notice is given in relation to a general meeting other than an accounts meeting—
    - (i) the remuneration policy contained in the directors’ remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or
    - (ii) where that policy has been revised in accordance with section 422A, the policy as so revised.
- (8) In this section—
  - (a) “accounts meeting” means a general meeting of the company before which the company’s annual accounts for a financial year are to be laid;
  - (b) “directors’ remuneration policy” means the policy of the company with respect to the matters mentioned in section 421(2A).”

## 80 Restrictions on payments to directors

After section 226 of the Companies Act 2006 insert—

### “CHAPTER 4A

#### DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

#### *Interpretation*

#### 226A Key definitions

- (1) In this Chapter—

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“directors’ remuneration policy” means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;

“quoted company” has the same meaning as in Part 15 of this Act;

“remuneration payment” means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person—

- (a) holding, agreeing to hold or having held office as director of a company, or
- (b) holding, agreeing to hold or having held, during a period when the person is or was such a director—
  - (i) any other office or employment in connection with the management of the affairs of the company, or
  - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,

other than a payment for loss of office;

“payment for loss of office” has the same meaning as in Chapter 4 of this Part.

- (2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—
  - (a) to cease to hold office as director, or
  - (b) to cease to be the holder of—
    - (i) any other office or employment in connection with the management of the affairs of the company, or
    - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (3) If in connection with the transfer—
  - (a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or
  - (b) any valuable consideration is given to the director by a person other than the company,the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.
- (4) In subsection (2), “relevant transfer” means—
  - (a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;
  - (b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.
- (5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.
- (6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.

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- (7) References in this Chapter to a payment to a person (“B”) who is, has been or is to be a director of a company include—
  - (a) a payment to a person connected with B, or
  - (b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.
- (8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.
- (9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person’s status as a shadow director.

*Restrictions relating to remuneration or loss of office payments*

**226B Remuneration payments**

- (1) A quoted company may not make a remuneration payment to a person who is, or is to be or has been, a director of the company unless—
  - (a) the payment is consistent with the approved directors’ remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors’ remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

**226C Loss of office payments**

- (1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—
  - (a) the payment is consistent with the approved directors’ remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors’ remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

**226D Sections 226B and 226C: supplementary**

- (1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—
  - (a) at the company’s registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and
  - (b) at that meeting itself.

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- (2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).
- (3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.
- (4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.
- (5) Nothing in section 226B or 226C authorises the making of a remuneration payment or (as the case may be) a payment for loss of office in contravention of the articles of the company concerned.
- (6) Nothing in section 226B or 226C applies in relation to a remuneration payment or (as the case may be) a payment for loss of office made to a person who is, or is to be or has been, a director of a quoted company before the earlier of—
  - (a) the end of the first financial year of the company to begin on or after the day on which it becomes a quoted company, and
  - (b) the date from which the company's first directors' remuneration policy to be approved under section 439A takes effect.
- (7) In this section the "company's website" is the website on which the company makes material available under section 430.

### *Supplementary*

#### **226E Payments made without approval: civil consequences**

- (1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.
- (2) If a payment is made in contravention of section 226B or 226C—
  - (a) it is held by the recipient on trust for the company or other person making the payment, and
  - (b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.
- (3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company—
  - (a) subsection (2) does not apply, and
  - (b) the payment is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid—
  - (a) subsection (2) does not apply,

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- (b) the payment is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
  - (c) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.
- (5) If in proceedings against a director for the enforcement of a liability under subsection (2)(b)—
- (a) the director shows that he or she has acted honestly and reasonably, and
  - (b) the court considers that, having regard to all the circumstances of the case, the director ought to be relieved of liability,
- the court may relieve the director, either wholly or in part, from liability on such terms as the court thinks fit.

#### **226F Relationship with requirements under Chapter 4**

- (1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.
- (2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b)."

### **81 Payments to directors: minor and consequential amendments**

- (1) The Companies Act 2006 is amended as follows.
- (2) In section 180 (consent, approval or authorisation by members)—
  - (a) in subsection (2), in the words before paragraph (a)—
    - (i) after “Chapter 4” insert “or 4A”, and
    - (ii) for “that Chapter” substitute “either of those Chapters”,
  - (b) in that subsection, in paragraph (a), for “that Chapter” substitute “the Chapter concerned”, and
  - (c) in subsection (3), after “Chapter 4” insert “or 4A”.
- (3) In section 190 (substantial property transactions: requirement of members’ approval), in subsection (6)(b), for the words in brackets substitute “(payments to which the requirements of Chapter 4 or 4A apply)”.
- (4) In section 215 (payments for loss of office), after subsection (4) insert—
  - “(5) Nothing in this section or sections 216 to 222 applies in relation to a payment for loss of office to a director of a quoted company other than a payment to which section 226C does not apply by virtue of section 226D(6).”
- (5) Section 430 (quoted companies: annual accounts and reports to be made available on website) is amended as follows.
- (6) After subsection (2) insert—

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- “(2A) If the directors’ remuneration policy of a quoted company is revised in accordance with section 422A, the company must ensure that the revised policy is made available on the website on which its annual accounts and reports are made available.
- (2B) If a person ceases to be a director of a quoted company, the company must ensure that the following information is made available on the website on which its annual accounts and reports are made available—
- (a) the name of the person concerned,
  - (b) particulars of any remuneration payment (within the meaning of Chapter 4A of Part 10) made or to be made to the person after ceasing to be a director, including its amount and how it was calculated, and
  - (c) particulars of any payment for loss of office (within the meaning of that Chapter) made or to be made to the person, including its amount and how it was calculated.”
- (7) In subsection (3) —
- (a) for “the annual accounts and reports on the website” substitute “the material made available on the website under subsections (1) to (2B)”, and
  - (b) for “the annual accounts and reports from” substitute “such material from”.
- (8) After subsection (4) insert—
- “(4A) Where subsection (2A) or (2B) applies, the material in question—
- (a) must be made available as soon as reasonably practicable, and
  - (b) must be kept available until the next directors’ remuneration report of the company is made available on the website.”
- (9) In subsection (5)—
- (a) in the words before paragraph (a), for the words from “the annual accounts and reports” to “that period” substitute “material available on a website throughout the period mentioned in subsection (4) or (as the case may be) (4A)”, and
  - (b) in paragraph (a) for “the annual accounts and reports are” substitute “the material is”.
- (10) In section 440 (quoted companies: offences in connection with procedure for approval) —
- (a) in subsection (1) —
    - (i) after “section 439(1)” insert “or 439A(1) or (2)”, and
    - (ii) in the words in brackets, after “report” insert “or policy”,
  - (b) in subsection (2), for “the accounts meeting” substitute “the meeting to which it relates”, and
  - (c) in subsection (5), omit the definition of “the accounts meeting”.
- (11) In Schedule 8 (in the index of defined expressions), at the appropriate places insert—

“directors’ remuneration policy (in Chapter 4A of Part 10) | section 226A(1)”

“payment for loss of office (in Chapter 4A of Part 10) | section 226A(1)”

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“remuneration payment (in Chapter 4A of Part 10 | section 226A(1))”.

(12) In that Schedule, after “quoted company”, insert—

— “in Chapter 4A of Part 10 | section 226A(1)”.

## **82 Payments to directors: transitional provision**

- (1) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 439A(1)(a) of the Companies Act 2006 (as inserted by section 79(4) of this Act) applies as if—
  - (a) the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force, and
  - (b) at the end of the paragraph (but before the “, and”) there were inserted “or at an earlier general meeting”.
- (2) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 226D(6)(a) of the Companies Act 2006 (as inserted by section 80 of this Act) applies as if the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force.
- (3) Chapter 4A of Part 10 of the Companies Act 2006 does not apply in relation to remuneration payments or payments for loss of office that are required to be made under an agreement entered into before 27 June 2012 or in consequence of any other obligation arising before that date.
- (4) An agreement entered into, or any other obligation arising, before 27 June 2012 that is modified or renewed on or after that date is to be treated for the purposes of subsection (3) as having been entered into or (as the case may be) as having arisen on the date on which it was modified or renewed.
- (5) The amendment made by section 81(4) does not apply in relation to a payment for loss of office to which subsection (3) of this section applies.

*Redress schemes: lettings and property management agents*

## **83 Redress schemes: lettings agency work**

- (1) The Secretary of State may by order require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work which is either—
  - (a) a redress scheme approved by the Secretary of State, or
  - (b) a government administered redress scheme.
- (2) A “redress scheme” is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person.
- (3) A “government administered redress scheme” means a redress scheme which is—



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- (a) administered by or on behalf of the Secretary of State, and
  - (b) designated for the purposes of the order by the Secretary of State.
- (4) The order may provide for the duty mentioned in subsection (1) to apply—
  - (a) only to specified descriptions of persons who engage in lettings agency work;
  - (b) only in relation to specified descriptions of such work.
- (5) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (6) Before making the order, the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a redress scheme before the duty applies to them.
- (7) In this section, “lettings agency work” means things done by any person in the course of a business in response to instructions received from—
  - (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
  - (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).
- (8) However, “lettings agency work” does not include any of the following things when done by a person who does no other things falling within subsection (7)—
  - (a) publishing advertisements or disseminating information;
  - (b) providing a means by which—
    - (i) a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or (as the case may be) prospective landlord;
    - (ii) a prospective landlord and a prospective tenant can continue to communicate directly with each other.
- (9) “Lettings agency work” also does not include —
  - (a) things done by a local authority;
  - (b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.
- (10) In subsection (7), “domestic tenancy” means—
  - (a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988 except where—
    - (i) the landlord is a private registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008), or
    - (ii) the tenancy is a long lease within the meaning given by section 84(10);
  - (b) a tenancy under which a dwelling-house is let as a separate dwelling and which is of a description specified for the purposes of this section in an order made by the Secretary of State.
- (11) An order under subsection (10)(b) may not provide for any of the following to be a domestic tenancy—

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- (a) a tenancy where the landlord is a registered provider of social housing (as to which see section 80 of the Housing and Regeneration Act 2008);
- (b) a long lease within the meaning given by section 84(10).

#### **84 Redress schemes: property management work**

- (1) The Secretary of State may by order require persons who engage in property management work to be members of a redress scheme for dealing with complaints in connection with that work which is either—
  - (a) a redress scheme approved by the Secretary of State, or
  - (b) a government administered redress scheme.
- (2) “Redress scheme” and “government administered redress scheme” have the same meanings as in section 83.
- (3) The order may provide for the duty mentioned in subsection (1) to apply—
  - (a) only to specified descriptions of persons who engage in property management work;
  - (b) only in relation to specified descriptions of such work.
- (4) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).
- (5) Before making the order, the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a redress scheme before the duty applies to them.
- (6) In this section, “property management work” means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where—
  - (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and
  - (b) the premises consist of or include a dwelling-house let under a relevant tenancy.
- (7) However, “property management work” does not include—
  - (a) things done by a person who is a social landlord for the purposes of Schedule 2 to the Housing Act 1996;
  - (b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.
- (8) In subsection (6), “relevant tenancy” means—
  - (a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;
  - (b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977;
  - (c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies;
  - (d) a tenancy of a description specified for the purposes of this section in an order made by the Secretary of State.

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- (9) An order under subsection (8)(d) may not provide for a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies to be a relevant tenancy.
- (10) In subsection (8)(c), “long lease” means a lease which is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 or which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant’s total share (within the meaning given by that section) were 100 per cent.

## **85 Orders under section 83 or 84: enforcement**

- (1) An order under section 83(1) or 84(1) may make provision —
- (a) for sanctions to be imposed in respect of a breach of a requirement imposed by the order;
  - (b) for the investigation of suspected breaches of such a requirement.
- (2) The sanctions for which provision may be made in the order are—
- (a) the imposition of civil penalties;
  - (b) the making of orders prohibiting a person from engaging in lettings agency work or (as the case may be) property management work or from engaging in a particular description of such work;
  - (c) the creation of criminal offences in respect of breaches of orders mentioned in paragraph (b).
- (3) Provision made for the imposition of a sanction by virtue of subsection (1)(a) must include—
- (a) provision for appeals to a court or tribunal against the imposition of the sanction, and
  - (b) such other provision as the Secretary of State considers appropriate for safeguarding the interests of persons on whom the sanction may be imposed.
- (4) Provision made by virtue of this section may confer functions on a person that exercises functions of a public nature.
- (5) The Secretary of State may make payments out of money provided by Parliament to a person on whom functions are conferred by virtue of this section.

## **86 Sections 83 to 85: minor definitions**

- (1) This section applies for the purposes of sections 83 to 85.
- (2) References to persons who engage in lettings agency work or property management work do not include references to persons who engage in that work in the course of their employment under a contract of employment.
- (3) A “dwelling-house” may be a house or part of a house.
- (4) “Local authority” means—
- (a) a county or district council;
  - (b) a London borough council;
  - (c) the Common Council of the City of London in its capacity as a local authority;
  - (d) the Council of the Isles of Scilly.

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**87 Approval of redress schemes for the purposes of section 83 or 84**

- (1) The Secretary of State may by order make provision about the approval of redress schemes for the purposes of section 83 or 84, including provision as to—
  - (a) the making of applications for approval;
  - (b) conditions which must be satisfied before approval may be given;
  - (c) conditions which must be complied with by administrators of approved redress schemes;
  - (d) the withdrawal of approval.
- (2) The order may make provision about the conditions which must be satisfied before a scheme administered by or on behalf of the Secretary of State may be designated for the purposes of section 83 or 84.

**88 Redress schemes: supplemental**

- (1) The power to make an order under section 83, 84 or 87 includes power to make incidental, supplementary, consequential, transitional or saving provision, including doing so by amending any provision made by or under an Act.
- (2) An order under any of those sections must be made by statutory instrument.
- (3) A statutory instrument containing (whether alone or with other provision)—
  - (a) an order under section 83 or 84 which includes—
    - (i) provision by virtue of section 85, or
    - (ii) provision by virtue of subsection (1) of this section that amends an Act, or
  - (b) an order under section 87,
 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing an order under section 83 or 84, other than one to which subsection (3) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Nothing in sections 83 to 87 prevents a redress scheme from providing—
  - (a) for membership to be open to persons who are not subject to the duty to be a member of a scheme;
  - (b) for the investigation and determination of any complaints in relation to which the duty does not apply, where the members concerned have voluntarily accepted the jurisdiction of the scheme over those complaints;
  - (c) for the exclusion from investigation and determination under the scheme of any complaint in such cases or circumstances as may be specified in or determined under the scheme.

*Supply of customer data*

**89 Supply of customer data**

- (1) The Secretary of State may by regulations require a regulated person to provide customer data—
  - (a) to a customer, at the customer's request;

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- (b) to a person who is authorised by a customer to receive the data, at the customer's request or, if the regulations so provide, at the authorised person's request.
- (2) "Regulated person" means—
- (a) a person who, in the course of a business, supplies gas or electricity to any premises;
  - (b) a person who, in the course of a business, provides a mobile phone service;
  - (c) a person who, in the course of a business, provides financial services consisting of the provision of current account or credit card facilities;
  - (d) any other person who, in the course of a business, supplies or provides goods or services of a description specified in the regulations.
- (3) "Customer data" means information which—
- (a) is held in electronic form by or on behalf of the regulated person, and
  - (b) relates to transactions between the regulated person and the customer.
- (4) Regulations under subsection (1) may make provision as to the form in which customer data is to be provided and when it is to be provided (and any such provision may differ depending on the form in which a request for the data is made).
- (5) Regulations under subsection (1)—
- (a) may authorise the making of charges by a regulated person for complying with requests for customer data, and
  - (b) if they do so, must provide that the amount of any such charge—
    - (i) is to be determined by the regulated person, but
    - (ii) may not exceed the cost to that person of complying with the request.
- (6) Regulations under subsection (1)(b) may provide that the requirement applies only if the authorised person satisfies any conditions specified in the regulations.
- (7) In deciding whether to specify a description of goods or services for the purposes of subsection (2)(d), the Secretary of State must (among other things) have regard to the following—
- (a) the typical duration of the period during which transactions between suppliers or providers of the goods or services and their customers take place;
  - (b) the typical volume and frequency of the transactions;
  - (c) the typical significance for customers of the costs incurred by them through the transactions;
  - (d) the effect that specifying the goods or services might have on the ability of customers to make an informed choice about which supplier or provider of the goods or services, or which particular goods or services, to use;
  - (e) the effect that specifying the goods or services might have on competition between suppliers or providers of the goods or services.
- (8) The power to make regulations under this section may be exercised—
- (a) so as to make provision generally, only in relation to particular descriptions of regulated persons, customers or customer data or only in relation to England, Wales, Scotland or Northern Ireland;
  - (b) so as to make different provision for different descriptions of regulated persons, customers or customer data;

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- (c) so as to make different provision in relation to England, Wales, Scotland and Northern Ireland;
  - (d) so as to provide for exceptions or exemptions from any requirement imposed by the regulations, including doing so by reference to the costs to the regulated person of complying with the requirement (whether generally or in particular cases).
- (9) For the purposes of this section, a person (“C”) is a customer of another person (“R”) if—
- (a) C has at any time, including a time before the commencement of this section, purchased (whether for the use of C or another person) goods or services supplied or provided by R or received such goods or services free of charge, and
  - (b) the purchase or receipt occurred—
    - (i) otherwise than in the course of a business, or
    - (ii) in the course of a business of a description specified in the regulations.
- (10) In this section, “mobile phone service” means an electronic communications service which is provided wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

## 90 Supply of customer data: enforcement

- (1) Regulations may make provision for the enforcement of regulations under section 89 (“customer data regulations”) by the Information Commissioner or any other person specified in the regulations (and, in this section, “enforcer” means a person on whom functions of enforcement are conferred by the regulations).
- (2) The provision that may be made under subsection (1) includes provision—
- (a) for applications for orders requiring compliance with the customer data regulations to be made by an enforcer to a court or tribunal;
  - (b) for notices requiring compliance with the customer data regulations to be issued by an enforcer and for the enforcement of such notices (including provision for their enforcement as if they were orders of a court or tribunal).
- (3) The provision that may be made under subsection (1) also includes provision—
- (a) as to the powers of an enforcer for the purposes of investigating whether there has been, or is likely to be, a breach of the customer data regulations or of orders or notices of a kind mentioned in subsection (2)(a) or (b) (which may include powers to require the provision of information and powers of entry, search, inspection and seizure);
  - (b) for the enforcement of requirements imposed by an enforcer in the exercise of such powers (which may include provision comparable to any provision that is, or could be, included in the regulations for the purposes of enforcing the customer data regulations).
- (4) Regulations under subsection (1) may—
- (a) require an enforcer (if not the Information Commissioner) to inform the Information Commissioner if the enforcer intends to exercise functions under the regulations in a particular case;
  - (b) provide for functions under the regulations to be exercisable by more than one enforcer (whether concurrently or jointly);

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- (c) where such functions are exercisable concurrently by more than one enforcer—
  - (i) designate one of the enforcers as the lead enforcer;
  - (ii) require the other enforcers to consult the lead enforcer before exercising the functions in a particular case;
  - (iii) authorise the lead enforcer to give directions as to which of the enforcers is to exercise the functions in a particular case.
- (5) Regulations may make provision for applications for orders requiring compliance with the customer data regulations to be made to a court or tribunal by a customer who has made a request under those regulations or in respect of whom such a request has been made.
- (6) Subsection (8)(a) to (c) of section 89 applies for the purposes of this section as it applies for the purposes of that section.
- (7) The Secretary of State may make payments out of money provided by Parliament to an enforcer.
- (8) In this section, “customer” and “regulated person” have the same meaning as in section 89.

## **91 Supply of customer data: supplemental**

- (1) The power to make regulations under section 89 or 90 includes—
  - (a) power to make incidental, supplementary, consequential, transitional or saving provision;
  - (b) power to provide for a person to exercise a discretion in a matter.
- (2) Regulations under either of those sections must be made by statutory instrument.
- (3) A statutory instrument containing (whether alone or with other provision)—
  - (a) regulations under section 89 which make provision by virtue of section 89(2)(d), or
  - (b) regulations under section 90,may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument which—
  - (a) contains regulations under section 89, and
  - (b) is not an instrument to which subsection (3) applies,is subject to annulment in pursuance of a resolution of either House of Parliament.

### *Insolvency: protection of essential supplies*

## **92 Power to add to supplies protected under Insolvency Act 1986**

- (1) The Secretary of State may by order amend section 233 of the Insolvency Act 1986 so as to add to the supplies mentioned in subsection (3) of that section any of the following—
  - (a) a supply of gas, electricity, water or communication services by a specified description of person;

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- (b) a supply of a specified description of goods or services by a specified description of person where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.
- (2) The Secretary of State may by order amend section 372 of that Act of 1986 so as to add to the supplies mentioned in subsection (4) of that section any of the following—
  - (a) a supply of gas, electricity, water or communication services by a specified description of person;
  - (b) a supply of a specified description of goods or services by a specified description of person where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.
- (3) The power to make an order under this section includes power to make incidental, supplementary, consequential, transitional or saving provision, including doing so by amending any enactment.
- (4) An order under this section must be made by statutory instrument.
- (5) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section—
  - “enactment” includes—
    - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
    - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
    - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; and
  - “specified” means specified in the order.

### **93 Corporate insolvency: power to give further protection to essential supplies**

- (1) The Secretary of State may by order make provision for insolvency-related terms of a contract for the supply of essential goods or services to a company to cease to have effect where—
  - (a) the company enters administration or a voluntary arrangement under Part 1 of the Insolvency Act 1986 takes effect in relation to it, and
  - (b) any conditions specified in the order are met.
- (2) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the contract may be terminated by the supplier if—
  - (a) an insolvency office-holder consents to the termination,
  - (b) a court grants permission for the termination, or
  - (c) any charges in respect of the supply that are incurred after the company enters administration or the voluntary arrangement takes effect are not paid within the period of 28 days beginning with the day on which payment is due.
- (3) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the supplier may terminate the



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supply unless an insolvency office-holder personally guarantees the payment of any charges in respect of the continuation of the supply.

- (4) The order may provide for exceptions to the right of a supplier to terminate a supply under provision made by virtue of subsection (3).
- (5) The order must (in addition to the provision mentioned in subsections (2) and (3)) include such other provision as the Secretary of State considers appropriate for securing that the interests of suppliers are protected.
- (6) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 233(3) of the Insolvency Act 1986.
- (7) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (8) In this section, “insolvency office-holder” means—
  - (a) in a case where a company enters administration, the administrator;
  - (b) in the case where a voluntary arrangement under Part 1 of the Insolvency Act 1986 takes effect in relation to a company, the supervisor of the voluntary arrangement.

#### **94 Individual insolvency: power to give further protection to essential supplies**

- (1) The Secretary of State may by order make provision for insolvency-related terms of a contract for the supply of essential goods or services to an individual to cease to have effect where—
  - (a) a voluntary arrangement proposed by the individual is approved under Part 8 of the Insolvency Act 1986, and
  - (b) any conditions specified in the order are met.
- (2) The order must include a condition that ensures that an insolvency-related term of a contract for the supply of essential goods or services to an individual does not cease to have effect unless the supply is for the purpose of a business that is or has been carried on by the individual or with which the individual has or had another connection of a kind specified in the order.
- (3) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the contract may be terminated by the supplier if—
  - (a) the supervisor of the voluntary arrangement consents to the termination,
  - (b) a court grants permission for the termination, or

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- (c) any charges in respect of the supply that are incurred after the voluntary arrangement proposed by the individual is approved are not paid within the period of 28 days beginning with the day on which payment is due.
- (4) The order must include provision for securing that, where an insolvency-related term of a contract ceases to have effect under the order, the supplier may terminate the supply unless the supervisor of the voluntary arrangement personally guarantees the payment of any charges in respect of the continuation of the supply.
- (5) The order may provide for exceptions to the right of a supplier to terminate a supply under provision made by virtue of subsection (4).
- (6) The order must (in addition to the provision mentioned in subsections (3) and (4)) include such other provision as the Secretary of State considers appropriate for securing that the interests of suppliers are protected.
- (7) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 372(4) of the Insolvency Act 1986.
- (8) An insolvency-related term of a contract for the supply of essential goods or services to an individual is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the voluntary arrangement proposed by the individual is approved,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the voluntary arrangement proposed by the individual is approved, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the voluntary arrangement proposed by the individual is approved.

## **95 Sections 93 and 94: supplemental**

- (1) The power to make an order under section 93 or 94 includes—
  - (a) power to make different provision for different cases;
  - (b) power to provide for a person to exercise a discretion in a matter;
  - (c) power to make incidental, supplementary, consequential, transitional or saving provision;
  - (d) power to make any provision that may be made by the order by amending the Insolvency Act 1986 or any other enactment.
- (2) An order under either of those sections may not be made so as to have effect in relation to contracts entered into before the order come into force.
- (3) An order under either of those sections must be made by statutory instrument.
- (4) A statutory instrument containing an order under either of those sections may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) In this section, “enactment” has the same meaning as in section 92.

### *Royal Charters*

#### **96 Royal Charters: requirements for Parliamentary approval**

Where a body is established by Royal Charter after 1 March 2013 with functions relating to the carrying on of an industry, no recommendation may be made to Her Majesty in Council to amend the body's Charter or dissolve the body unless any requirements included in the Charter on the date it is granted for Parliament to approve the amendment or dissolution have been met.

### *Caste as an aspect of race*

#### **97 Equality Act 2010: caste as an aspect of race**

- (1) Section 9(5) of the Equality Act 2010 is amended in accordance with subsections (2) to (4).
- (2) Omit “may by order”.
- (3) In paragraph (a) (power to provide for caste to be an aspect of race) at the beginning insert “must by order”.
- (4) In paragraph (b) (power to provide for exceptions to apply or not to apply to caste) at the beginning insert “may by order”.
- (5) A Minister of the Crown—
  - (a) may carry out a review of the effect of section 9(5) of the Equality Act 2010 (and orders made under it) and whether it remains appropriate, and
  - (b) must publish a report on the outcome of any such review.
- (6) The power under subsection (5)(a) may not be exercised before the end of the period of 5 years beginning with the day on which this Act is passed (but may be exercised on more than one occasion after that).
- (7) If a Minister of the Crown considers it appropriate in the light of the outcome of a review under subsection (5), the Minister may by order repeal or otherwise amend section 9(5) of the Equality Act 2010.
- (8) The power to make an order under subsection (7) includes power to make incidental, supplementary, consequential, transitional or saving provision, including doing so by amending an Act or subordinate legislation (within the meaning of the Interpretation Act 1978).
- (9) An order under subsection (7) must be made by statutory instrument.
- (10) A statutory instrument containing an order under subsection (7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

### *Equal pay audits*

#### **98 Power to provide for equal pay audits**

- (1) The Equality Act 2010 is amended as follows.

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(2) After section 139 insert—

**“139A Equal pay audits**

- (1) Regulations may make provision requiring an employment tribunal to order the respondent to carry out an equal pay audit in any case where the tribunal finds that there has been an equal pay breach.
- (2) An equal pay breach is—
  - (a) a breach of an equality clause, or
  - (b) a contravention in relation to pay of section 39(2), 49(6) or 50(6), so far as relating to sex discrimination.
- (3) An equal pay audit is an audit designed to identify action to be taken to avoid equal pay breaches occurring or continuing.
- (4) The regulations may make further provision about equal pay audits, including provision about—
  - (a) the content of an audit;
  - (b) the powers and duties of a tribunal for deciding whether its order has been complied with;
  - (c) any circumstances in which an audit may be required to be published or may be disclosed to any person.
- (5) The regulations must provide for an equal pay audit not to be ordered where the tribunal considers that—
  - (a) an audit completed by the respondent in the previous 3 years meets requirements prescribed for this purpose,
  - (b) it is clear without an audit whether any action is required to avoid equal pay breaches occurring or continuing,
  - (c) the breach the tribunal has found gives no reason to think that there may be other breaches, or
  - (d) the disadvantages of an equal pay audit would outweigh its benefits.
- (6) The regulations may provide for an employment tribunal to have power, where a person fails to comply with an order to carry out an equal pay audit, to order that person to pay a penalty to the Secretary of State of not more than an amount specified in the regulations.
- (7) The regulations may provide for that power—
  - (a) to be exercisable in prescribed circumstances;
  - (b) to be exercisable more than once, if the failure to comply continues.
- (8) The first regulations made by virtue of subsection (6) must not specify an amount of more than £5,000.
- (9) Sums received by the Secretary of State under the regulations must be paid into the Consolidated Fund.
- (10) The first regulations under this section must specify an exemption period during which the requirement to order an equal pay audit does not apply in the case of a business that—
  - (a) had fewer than 10 employees immediately before a specified time, or

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- (b) was begun as a new business in a specified period.
- (11) For the purposes of subsection (10)—
  - (a) “specified” means specified in the regulations, and
  - (b) the number of employees a business had or the time when a business was begun as a new business is to be determined in accordance with the regulations.
- (12) Before making regulations under this section, a Minister of the Crown must consult any other Minister of the Crown with responsibility for employment tribunals.”
- (3) In section 207(6) (exercise of power to make subordinate legislation: power to amend enactments) after “37,” and after “in the case of section” insert “139A,”.
- (4) In section 208(5) (subordinate legislation by Ministers of the Crown etc: affirmative procedure) after paragraph (e) insert—
  - “(ea) regulations under section 139A (equal pay audits);”.

### *General*

## **99 Consequential amendments, repeals and revocations**

- (1) The Secretary of State may by order made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) includes power—
  - (a) to make transitional, transitory or saving provision;
  - (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including any enactment passed or made in the same Session as this Act).
- (3) An order under subsection (1) which makes provision for the transfer of a function from the Competition Commission or the Office of Fair Trading to the Competition and Markets Authority in consequence of Part 3 of this Act may make such modifications to the function as the Secretary of State considers appropriate in consequence of the transfer.
- (4) The modifications mentioned in subsection (3) may, in particular, alter the circumstances in which, or the conditions under which, the function is exercisable.
- (5) A statutory instrument containing (whether alone or with other provision) an order under this section which amends, repeals or revokes any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing an order under this section which does not amend, repeal or revoke any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
  - “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;
  - “primary legislation” means—

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- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, and
- (d) Northern Ireland legislation.

#### **100 Transitional, transitory or saving provision**

The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

#### **101 Financial provision**

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State or the Competition and Markets Authority, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

#### **102 Extent**

- (1) Part 1 extends to England and Wales, Scotland and Northern Ireland.
- (2) Part 2 extends only to England and Wales and Scotland, except that the following provisions of that Part extend also to Northern Ireland—
  - (a) section 23(3);
  - (b) paragraph 11 of Schedule 1;
  - (c) paragraphs 36 to 39 of Schedule 2.
- (3) Part 3 extends to England and Wales, Scotland and Northern Ireland, except as follows—
  - (a) paragraphs 15 to 44, 69 to 84 and 101 to 107 of Schedule 6 extend only to England and Wales and Scotland;
  - (b) paragraphs 52 to 68, 96, 108 to 123 and 127 to 139 of that Schedule extend only to England and Wales;
  - (c) paragraphs 9 to 14, 45 to 51, 171 to 180 and 192 to 209 of that Schedule extend only to Scotland;
  - (d) paragraphs 149 to 170 and 181 to 191 of that Schedule extend only to Northern Ireland.
- (4) Part 4 extends to England and Wales, Scotland and Northern Ireland, except as follows—
  - (a) paragraphs 1 to 7 and 11 to 14 of Schedule 14 and paragraphs 2, 3, 7, 13 and 41 of Schedule 15, extend only to England and Wales and Scotland;
  - (b) paragraphs 8 to 10 and 20 to 22 of Schedule 14, and paragraphs 4 to 6 and 47 to 49 of Schedule 15, extend only to England and Wales;
  - (c) paragraphs 23 to 29 of Schedule 14, and paragraphs 53 to 55 of Schedule 15, extend only to Northern Ireland.
- (5) Part 5 extends as follows—

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- (a) sections 59, 62, 67, 68 and 70 and Part 1 of Schedule 21 extend to England and Wales, Scotland and Northern Ireland,
  - (b) section 69 extends only to England and Wales and Scotland except that it also extends to Northern Ireland so far as Parts 1 and 4 of the Health and Safety at Work etc. Act 1974 extend there,
  - (c) sections 64, 65 and 66 and paragraphs 1, 56 to 58, 60 and 66 of Schedule 19 (and section 71(3) so far as it relates to those paragraphs) extend only to England and Wales and Scotland,
  - (d) sections 60, 61, 63, 71(1) and (2) and 72(1) to (3), Schedules 16, 17 and 18, paragraphs 2 to 55, 59, 61 to 65 of Schedule 19 (and section 71(3) so far as it relates to those paragraphs) and Parts 2 and 3 of Schedule 21 extend only to England and Wales, and
  - (e) an amendment, repeal or revocation made by Schedule 20 has the same extent as the provision amended, repealed or revoked, subject to subsection (6).
- (6) The repeals of the following provisions in Schedule 20 extend to England and Wales only—
- (a) section 67 of the Agriculture Act 1967,
  - (b) paragraph 32 of Schedule 2 to the Social Security (Consequential Provisions) Act 1975,
  - (c) paragraph 10 of Schedule 4 to the Social Security Pensions Act 1975,
  - (d) paragraph 12 of Schedule 17 to the Employment Protection Act 1975, and
  - (e) paragraph 4 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992.
- (7) If a provision repealed by Part 1 of Schedule 21 extends to the Isle of Man or any of the Channel Islands, Her Majesty may by Order in Council extend the repeal there.
- (8) This Part extends to England and Wales, Scotland and Northern Ireland except that—
- (a) sections 92, 93, 95, 97 and 98 extend only to England and Wales and Scotland;
  - (b) sections 83 to 88, 94 and 96 extend only to England and Wales.

### **103 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) section 10;
  - (b) section 24;
  - (c) section 28;
  - (d) sections 52 and 53;
  - (e) section 59;
  - (f) sections 75 to 78 and Schedule 22;
  - (g) sections 92 to 96;
  - (h) sections 98 to 104;
  - (i) any other provision so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power (arising under or by virtue of that provision) to make provision by regulations, rules or order made by statutory instrument.

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- (2) The following provisions (so far as not already in force by virtue of subsection (1) (i)) come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) Part 1;
  - (b) sections 12, 13, 15, 17, 18, 20, 21 and 22;
  - (c) section 62;
  - (d) section 64;
  - (e) section 97;
  - (f) paragraphs 7 and 8 of Schedule 17 (and section 63 so far as it relates to them);
  - (g) Parts 1 and 2 of Schedule 21 (and section 73 so far as it relates to them).
- (3) Except as provided by subsections (1) and (2), the provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (4) An order under subsection (3) may appoint different days for different purposes.

#### **104 Short title**

This Act may be cited as the Enterprise and Regulatory Reform Act 2013.



## SCHEDULES

### SCHEDULE 1

Section 7(2)

#### CONCILIATION: MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

- 1 In section 288 of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction on contracting out), in subsection (2), for “section 18” substitute “any of sections 18A to 18C”.

##### *Employment Tribunals Act 1996 (c. 17)*

- 2 The Employment Tribunals Act 1996 is amended as follows.
- 3 In section 7 (employment tribunal procedure regulations), in subsection (3ZA)(b), after “form” insert “(including certificates issued under section 18A(4))”.
- 4 In section 7B (mediation), in subsection (5), for “the Advisory, Conciliation and Arbitration Service” substitute “ACAS”.
- 5 (1) Section 18 (conciliation) is amended as follows.
- (2) At the end of the heading insert “: relevant proceedings etc.”
- (3) In subsection (1), for the words before paragraph (a) substitute “In this section and sections 18A to 18C “relevant proceedings” means employment tribunal proceedings —”.
- (4) In subsection (1)(b)—
- (a) after “68” insert “, 70B”;
- (b) after “Act 1992” insert “or paragraph 156 of Schedule A1 to that Act”.
- (5) In subsection (1)(dd), for “20(1)(a)” substitute “19D(1)(a)”.
- (6) Omit subsection (1)(f) and (n).
- (7) After subsection (1) insert—
- “(1A) Sections 18A and 18B apply in the case of matters which could be the subject of relevant proceedings, and section 18C applies in the case of relevant proceedings themselves.”
- (8) Omit subsections (2) to (5).
- (9) In subsections (6) and (7), for “this section” substitute “any of sections 18A to 18C”.
- 6 After section 18B (inserted by section 7(1)) insert—

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*Status: This is the original version (as it was originally enacted).*

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## “18C Conciliation after institution of proceedings

### “18C Conciliation after institution of proceedings

- (1) Where an application instituting relevant proceedings has been presented to an employment tribunal, and a copy of it has been sent to a conciliation officer, the conciliation officer shall endeavour to promote a settlement—
  - (a) if requested to do so by the person by whom and the person against whom the proceedings are brought, or
  - (b) if, in the absence of any such request, the conciliation officer considers that the officer could act under this section with a reasonable prospect of success.
- (2) Where a person who has presented a complaint to an employment tribunal under section 111 of the Employment Rights Act 1996 has ceased to be employed by the employer against whom the complaint was made, the conciliation officer may in particular—
  - (a) seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the conciliation officer to be equitable, or
  - (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the conciliation officer to act, seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.
- (3) In subsection (1) “settlement” means a settlement that brings proceedings to an end without their being determined by an employment tribunal.”

7 In section 19A (conciliation: recovery of sums payable under compromises), in subsection (1)(a)(i), for “section 18” substitute “any of sections 18A to 18C”.

8 In section 40 (power to amend Act), in subsection (2), omit the words from “and to section 18” to the end.

- 9 In section 42 (interpretation), in subsection (1)—
- (a) before the definition of “the Appeal Tribunal” insert—  
““ACAS” means the Advisory, Conciliation and Arbitration Service,”;
  - (b) in the definition of “conciliation officer” for “the Advisory, Conciliation and Arbitration Service” substitute “ACAS”.

### *Employment Rights Act 1996 (c. 18)*

10 In section 203 of the Employment Rights Act 1996 (restrictions on contracting out), in subsection (2)(e), for “section 18” substitute “any of sections 18A to 18C”.

### *National Minimum Wage Act 1998 (c. 39)*

11 In section 49 of the National Minimum Wage Act 1998 (restrictions on contracting out), in subsection (2)(a), for “section 18” substitute “any of sections 18A to 18C”.

*Employment Act 2008 (c. 24)*

- 12 Section 5 of the Employment Act 2008 (which amends provisions repealed by paragraph 5(8)) is omitted.

*Pensions Act 2008 (c. 30)*

- 13 In section 58 of the Pensions Act 2008 (restrictions on agreements to limit operation of Part 1), in subsection (3), for “section 18” substitute “any of sections 18A to 18C”.

SCHEDULE 2

Section 8

EXTENSION OF LIMITATION PERIODS TO ALLOW FOR CONCILIATION

*Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

- 1 The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- 2 In section 66 (complaint of infringement of right under section 64), after subsection (2) insert—
- “(2A) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).”
- 3 In section 68A (complaint of infringement of right under section 68), after subsection (1) insert—
- “(1A) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).”
- 4 In section 70C (section 70B: complaint to employment tribunal), after subsection (2) insert—
- “(2A) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).”
- 5 In section 87 (complaint in respect of employer’s failure under section 86), after subsection (2) insert—
- “(2A) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).”
- 6 In section 139 (time limit for proceedings under sections 137 and 138), after subsection (3) insert—
- “(4) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).”
- 7 (1) Section 145C (time limit for proceedings under sections 145A and 145B) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) After that subsection insert—

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*Status: This is the original version (as it was originally enacted).*

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“(2) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).”

8 In section 147 (time limit for proceedings under section 146), after subsection (3) insert—

“(4) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).”

9 (1) Section 171 (time limit for proceedings under sections 168, 168A, 169 and 170) is amended as follows.

(2) The existing text becomes subsection (1).

(3) After that subsection insert—

“(2) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).”

10 (1) Section 175 (time limit for proceedings under section 174) is amended as follows.

(2) The existing text becomes subsection (1).

(3) After that subsection insert—

“(2) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).”

11 In section 189 (complaint: contravention of section 188), after subsection (5) insert—

“(5A) Where the complaint concerns a failure to comply with a requirement of section 188, section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (5)(b).”

12 In section 192 (complaint by employee to employment tribunal: contravention of section 190), after subsection (2) insert—

“(2A) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).”

13 After section 292 insert—

**“292A Extension of time limits to facilitate conciliation before institution of proceedings**

**“292A Extension of time limits to facilitate conciliation before institution of proceedings**

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).

(2) In this section—

(a) Day A is the day on which the complainant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) Day B is the day on which the complainant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
  - (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.
  - (4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
  - (5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”
- 14 In Schedule A1 (collective bargaining: recognition), in paragraph 157 (complaint to employment tribunal: contravention of paragraph 156), after sub-paragraph (3) insert—
- “(4) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraph (1) (a).”

#### *Employment Rights Act 1996 (c. 18)*

- 15 The Employment Rights Act 1996 is amended as follows.
- 16 In section 11 (references to employment tribunals: contravention of section 8), after subsection (5) insert—
- “(6) Where the reference concerns compliance with section 8, section 207B (extension of time limits to facilitate conciliation before institution of proceedings) also applies for the purposes of subsection (4)(a).”
- 17 In section 23 (complaints to employment tribunals: contravention of section 13, 15, 18(1) or 21(1)), in subsection (3A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 18 In section 34 (complaints to employment tribunals: contravention of section 28), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 19 In section 48 (complaints to employment tribunals: contravention of Part 5), in subsection (4A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 20 In section 51 (complaints to employment tribunals: contravention of section 50), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 21 In section 54 (complaints to employment tribunals: contravention of section 52 or 53), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.

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*Status: This is the original version (as it was originally enacted).*

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- 22 In section 57 (complaints to employment tribunals: contravention of section 55 or 56), in subsection (2A), for the words from “applies” to the end substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a)”.
- 23 In section 57ZC (complaint to employment tribunal: agency workers), after subsection (3) insert—
- “(3A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (3)(a).”
- 24 In section 57B (complaint to employment tribunal: contravention of section 57A), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 25 In section 60 (complaints to employment tribunals: contravention of section 58 or 59), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 26 In section 63 (complaints to employment tribunals: contravention of section 61 or 62), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 27 In section 63C (complaints to employment tribunals: contravention of section 63A or 63B), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 28 In section 63I (complaints to employment tribunals: contravention of section 63F(4), (5) or (6) or 63I(1)(b)), in subsection (7), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 29 In section 70 (complaints to employment tribunals: contravention of section 64, 67 or 68), in subsection (8), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 30 In section 70A (complaints to employment tribunals: agency workers), after subsection (7) insert—
- “(7A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsections (2)(a) and (5)(a).”
- 31 In section 80 (complaint to employment tribunal: parental leave), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 32 In section 80H (complaints to employment tribunals: contravention of section 80G(1) or 80H(1)(b)), in subsection (7), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.
- 33 In section 111 (complaints to employment tribunal: contravention of section 92 or Part 10), in subsection (2A), for “applies” substitute “and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply”.

34 In section 164 (claims for redundancy payment: contravention of section 135), after subsection (4) insert—

“(5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1)(c) and (2).”

35 After section 207A (extension of time limits because of mediation in certain cross-border disputes) insert—

**“207B Extension of time limits to facilitate conciliation before institution of proceedings**

**“207B Extension of time limits to facilitate conciliation before institution of proceedings**

(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”

*National Minimum Wage Act 1998 (c. 39)*

36 The National Minimum Wage Act 1998 is amended as follows.

37 In section 11 (failure of employer to allow access to records), after subsection (4) insert—

“(4A) Where the complaint is presented to an employment tribunal in England and Wales or Scotland, section 11A applies for the purposes of subsection (3).”

38 After section 11 insert—

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*Status: This is the original version (as it was originally enacted).*

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**“11A Extension of time limit to facilitate conciliation before institution of proceedings**

**“11A Extension of time limit to facilitate conciliation before institution of proceedings**

- (1) In this section—
- (a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
  - (b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.
- (2) In working out when the time limit set by section 11(3) expires the period beginning with the day after Day A and ending with Day B is not to be counted.
- (3) If the time limit set by section 11(3) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
- (4) The power conferred on the employment tribunal by subsection (4) of section 11 to extend the time limit set by subsection (3) of that section is exercisable in relation to that time limit as extended by this section.”

39 In section 24 (enforcement of right under section 23), in subsection (2)(a), for “sections 48(2) to (4)” substitute “sections 48(2) to (4A)”.

*Employment Relations Act 1999 (c. 26)*

- 40 In section 11 of the Employment Relations Act 1999 (complaint to employment tribunal), after subsection (2) insert—
- “(2A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) of the Employment Rights Act 1996 apply for the purposes of subsection (2)(a).
- (2B) Subsections (2) and (2A) are to be treated as provisions of the Employment Rights Act 1996 for the purposes of sections 207A and 207B of that Act.”

*Pensions Act 2008 (c. 30)*

- 41 In section 56 of the Pensions Act 2008 (enforcement of right under section 55), in subsection (2), for “sections 48(2) to (4)” substitute “sections 48(2) to (4A)”.

*Equality Act 2010 (c. 15)*

- 42 The Equality Act 2010 is amended as follows.



- 43 In section 123 (time limits: proceedings under section 120), in subsection (1), for “section 140A” substitute “sections 140A and 140B”.
- 44 In section 129 (time limits: proceedings under section 127)—
- (a) in subsection (3), for “section 140A” substitute “sections 140A and 140B”;
  - (b) in subsection (4), after “the period mentioned in the second column” insert “, subject to section 140B”.
- 45 After section 140A (extension of time limits because of mediation in certain cross-border disputes) insert—

**“140B Extension of time limits to facilitate conciliation before institution of proceedings**

**“140B Extension of time limits to facilitate conciliation before institution of proceedings**

- (1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 140A.

- (2) In this section—

- (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

- (3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

- (4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

- (5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.”

## SCHEDULE 3

Section 16(2)

## FINANCIAL PENALTIES: MINOR AND CONSEQUENTIAL AMENDMENTS

*Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

- 1 In section 138 of the Trade Union and Labour Relations (Consolidation) Act 1992 (refusal of service of employment agency on grounds related to union membership), after subsection (2) insert—

“(2A) Section 12A of the Employment Tribunals Act 1996 (financial penalties) applies in relation to a complaint under this section as it applies in relation to a claim involving an employer and a worker (reading references to an employer as references to the employment agency and references to a worker as references to the complainant).”

*Employment Tribunals Act 1996 (c. 17)*

- 2 The Employment Tribunals Act 1996 is amended as follows.  
3 Before section 13 insert—

“*Costs etc, interest and enforcement*”.

- 4 (1) In section 41 (orders, regulations and rules), in subsection (2) (orders etc subject to affirmative resolution procedure), after “4(4) or (6D)” insert “, 12A(12)”.
- (2) If this paragraph comes into force before section 11, sub-paragraph (1) has effect as if “4(4)” were substituted for “4(4) or (6D)”.

*Employment Rights Act 1996 (c. 18)*

- 5 In section 201 of the Employment Rights Act 1996 (power to extend employment legislation to offshore employment), after subsection (3) insert—

“(3A) Where an Order in Council under this section confers jurisdiction on an employment tribunal, the jurisdiction conferred includes power to make an order under section 12A of the Employment Tribunals Act 1996 (financial penalties), and that section applies accordingly.”

*Agency Workers Regulations 2010 (S.I. 2010/93)*

- 6 In regulation 18 of the Agency Workers Regulations 2010 (complaints to employment tribunals etc), after paragraph (14) insert—

“(14A) In relation to an infringement or breach for which a tribunal orders a respondent to pay compensation under paragraph (8)(b), the tribunal may order the respondent also to pay a penalty under section 12A of the Employment Tribunals Act 1996 only if the tribunal decides not to exercise the power under paragraph (14) to make an additional award of compensation against the respondent.”

## SCHEDULE 4

Section 25(4)

### THE COMPETITION AND MARKETS AUTHORITY

#### PART 1

#### GENERAL

##### *Membership*

- 1 (1) The CMA is to consist of—
  - (a) a person appointed by the Secretary of State to chair the CMA and the CMA Board (the “chair”), and
  - (b) other persons appointed by the Secretary of State to membership of—
    - (i) the CMA Board (see Part 2);
    - (ii) the CMA panel (see Part 3);
    - (iii) both the CMA Board and the CMA panel.
- (2) The Secretary of State must consult the chair before making an appointment under sub-paragraph (1)(b).
- (3) At least five of the members appointed under sub-paragraph (1)(b) must be appointed to membership of the CMA Board.
- (4) At least one of the members appointed under sub-paragraph (1)(b) must be appointed to membership of the CMA Board and to membership of the CMA panel.
- (5) Of the persons appointed to membership of the CMA Board under sub-paragraph (1)(b), no more than half may be members of staff of the CMA.
- (6) In this Schedule, references to members of the CMA are to persons appointed under sub-paragraph (1).
- (7) A person holding office as a member of the Competition Appeal Tribunal is ineligible for appointment under this paragraph.

##### *Terms and conditions*

- 2 (1) The members of the CMA are to hold and vacate office in accordance with the terms and conditions of their appointments.
- (2) Those terms and conditions are to be determined by the Secretary of State.

##### *Term of appointment*

- 3 (1) Appointment to membership of the CMA Board under paragraph 1(1)(b) is to be for a term of not more than five years.
- (2) Appointment to membership of the CMA panel under paragraph 1(1)(b) is to be for a term of not more than eight years.
- (3) Appointment as the chair is to be for a term of not more than five years.

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*Status: This is the original version (as it was originally enacted).*

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### *Re-appointment*

- 4 (1) A person who has been appointed to membership of the CMA panel may be re-appointed to membership of the CMA panel only for the purpose of continuing to act as a member of a group constituted under paragraph 36 before the expiry of his or her term of office.
- (2) Subject to sub-paragraph (1), a person's previous appointment under paragraph 1 does not affect eligibility for a subsequent appointment under that paragraph.

### *Remuneration etc of members*

- 5 (1) The CMA must pay to its members such remuneration, allowances and expenses as the Secretary of State may determine.
- (2) The CMA must pay or make provision for the payment of such pension, allowances or gratuities as the Secretary of State may determine to or in respect of a current or former member.
- (3) If a person ceases to hold an office to which he or she has been appointed under paragraph 1, and the Secretary of State decides that there are special circumstances which mean that the person should be compensated, the CMA must pay compensation to the person of such amount as the Secretary of State may determine.

### *Resignation*

- 6 (1) The chair may at any time resign from membership of the CMA by giving written notice to this effect to the Secretary of State.
- (2) A person who is a member of either the CMA Board or the CMA panel (but not of both) may at any time resign from membership of the CMA by giving written notice to this effect to the Secretary of State.
- (3) A person who is a member of both the CMA Board and the CMA panel may at any time, by giving written notice to this effect to the Secretary of State—
- (a) resign from membership of either the CMA Board or the CMA panel, or
  - (b) resign from membership of the CMA.

### *Termination of membership*

- 7 The Secretary of State may at any time remove a person from office as a member of the CMA on any of the following grounds—
- (a) incapacity;
  - (b) misbehaviour;
  - (c) failure to carry out his or her duties.

### *Status*

- 8 The CMA is to perform its functions on behalf of the Crown.

*Chief executive and other staff*

- 9 (1) The CMA is to have a chief executive appointed by the Secretary of State (the “chief executive”).
- (2) The chief executive may also be a member of the CMA, but must not be—
- (a) the chair, or
  - (b) a member of the CMA panel.
- (3) Before appointing the chief executive, the Secretary of State must consult the chair.
- (4) The appointment—
- (a) is to be for a term of not more than five years;
  - (b) subject to that, is to be on such terms and conditions as the Secretary of State considers fit.
- (5) The chief executive holds that office as a member of the staff of the CMA.
- (6) A previous appointment as chief executive does not affect a person’s eligibility for re-appointment.
- 10 (1) The CMA may appoint other members of staff.
- (2) A person appointed as a member of the CMA’s staff under sub-paragraph (1) may also be a member of the CMA, but must not be—
- (a) the chair, or
  - (b) a member of the CMA panel.
- (3) The following are to be determined by the CMA with the approval of the Minister for the Civil Service—
- (a) the number of members of staff appointed under sub-paragraph (1);
  - (b) their conditions of service.
- 11 A person holding office as a member of the Competition Appeal Tribunal is ineligible for appointment under paragraph 9 or 10.

*Annual plan*

- 12 (1) The CMA must prepare an annual plan for each financial year.
- (2) The plan must—
- (a) set out the CMA’s main objectives for the year and indicate the relative priorities of each of those objectives;
  - (b) provide a summary of the proposed allocation of the CMA’s financial resources to the activities to be carried on in connection with those objectives.
- (3) The CMA must arrange for the plan to be laid before Parliament.
- (4) The CMA must publish the plan, in whatever way it considers appropriate, before the start of the financial year in question.
- 13 (1) Before finalising an annual plan, the CMA must draw up proposals for it.
- (2) The CMA must arrange for the proposals to be laid before Parliament.
- (3) The CMA must—

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*Status: This is the original version (as it was originally enacted).*

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- (a) publish the proposals in whatever way it considers appropriate, and
  - (b) make arrangements to consult with the public about them.
- (4) Arrangements made under sub-paragraph (3)(b) may provide for consultation with the public to be effected in whatever way the CMA considers appropriate.

#### *Performance report*

- 14 (1) As soon as practicable after the end of each financial year, the CMA must prepare and send to the Secretary of State an annual report on its activities and performance during the year.
- (2) The report must include—
- (a) a survey of developments, during the year, in matters relating to the CMA’s functions;
  - (b) an assessment of the extent to which the CMA’s objectives for the year, as set out in the plan published under paragraph 12, have been met;
  - (c) a summary of the significant decisions, investigations or other activities made or carried out by the CMA during the year;
  - (d) a summary of the allocation of the CMA’s financial resources to its various activities during the year;
  - (e) an assessment of the CMA’s performance and practices, during the year, in relation to its enforcement functions.
- (3) The CMA must—
- (a) arrange for the report to be laid before Parliament;
  - (b) publish the report in whatever way it considers appropriate.
- 15 The CMA may—
- (a) prepare other reports about matters relating to any of its functions;
  - (b) publish a report prepared under this paragraph.

#### *Concurrency report*

- 16 (1) As soon as practicable after the end of each financial year, the CMA must prepare a report containing an assessment of how the concurrency arrangements have operated during the year.
- (2) The concurrency arrangements are the arrangements for co-operation between the CMA and the sectoral regulators in respect of functions which are exercisable concurrently by the CMA and one or more of the regulators under Part 1 of the Competition Act 1998 (the “1998 Act”) and Part 4 of the Enterprise Act 2002 (the “2002 Act”).
- (3) The report must, in particular, include information about—
- (a) the exercise during the year by the CMA of its functions under Part 1 of the 1998 Act or Part 4 of the 2002 Act in cases in which the functions are or were exercisable concurrently by one or more sectoral regulators,
  - (b) the exercise during the year by each sectoral regulator of its functions under Part 1 of the 1998 Act or Part 4 of the 2002 Act, and
  - (c) any decision made during the year by a sectoral regulator, in respect of a case in relation to which the regulator considers that its functions under Part 1 of

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the 1998 Act were exercisable, that it was more appropriate for it to proceed by exercising functions other than those it has under that Part of that Act.

- (4) The CMA is not required to include information in a report under this paragraph if it considers that doing so would, or would be likely to, prejudice the exercise of any of the functions of the CMA or a sectoral regulator.
- (5) In preparing a report under this paragraph, the CMA must consult each sectoral regulator.
- (6) The CMA must publish a report prepared under this paragraph in whatever way it considers appropriate.
- (7) Each of the following is a sectoral regulator—
  - (a) the Office of Communications;
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Water Services Regulation Authority;
  - (d) the Office of Rail Regulation;
  - (e) the Northern Ireland Authority for Utility Regulation;
  - (f) the Civil Aviation Authority;
  - (g) Monitor.

#### *Documents*

- 17 (1) The application of the CMA's seal must be authenticated by the signature of—
  - (a) a person who is a member of the CMA Board, or
  - (b) a person authorised (generally or specifically) for that purpose by the CMA.
- (2) A document purporting to be duly executed under the CMA's seal or signed on its behalf—
  - (a) is to be received in evidence;
  - (b) is to be taken to be duly signed or sealed unless the contrary is shown.
- (3) But this paragraph does not apply in relation to a document which is, or is to be, signed in accordance with the law of Scotland.

#### *Membership of committees and sub-committees*

- 18 (1) The members of a committee or sub-committee of the CMA may include persons who are not members of the CMA.
- (2) A sub-committee may include persons who are not members of the committee that established it.

#### *Additional powers*

- 19 The CMA may—
  - (a) if so requested by the Secretary of State, represent the government of the United Kingdom in matters relating to international relations in any field connected to its functions, and
  - (b) promote good practice outside the United Kingdom in the carrying on of activities which may affect the economic interests of consumers in the United Kingdom.

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- 20 (1) The CMA may do anything that is calculated to facilitate, or is conducive or incidental to, the performance of its functions.
- (2) The power in sub-paragraph (1) is subject to any restrictions imposed by or under any enactment.

#### *Public records*

- 21 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert—  
“Competition and Markets Authority.”

#### *Parliamentary Commissioner*

- 22 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) at the appropriate place insert—  
“Competition and Markets Authority.”

#### *Disqualification*

- 23 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert—  
“The Competition and Markets Authority.”
- 24 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert—  
“The Competition and Markets Authority.”

#### *Freedom of information*

- 25 In Part 1 of Schedule 1 to the Freedom of Information Act 2000 (definition of public authority: general)—
- (a) in paragraph 1 after “other than” insert “—
    - (a) the Competition and Markets Authority,
    - (b)”;
  - (b) after paragraph 1 insert—
    - “1ZA The Competition and Markets Authority, in respect of information held otherwise than as a tribunal.”

#### *Equality*

- 26 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities: general), under the heading “*Industry, business, finance etc*” at the appropriate place insert—  
“The Competition and Markets Authority.”



## PART 2

### THE CMA BOARD

#### *Membership*

- 27 The CMA Board is to consist of—
- (a) the chair;
  - (b) the members appointed under paragraph 1(1)(b) to membership of the CMA Board.

#### *Functions*

- 28 Except where otherwise provided by or under any enactment, the functions of the CMA are exercisable by the CMA Board on behalf of the CMA.

#### *Delegation*

- 29 (1) Anything that the CMA Board is required or permitted to do (including conferring authorisation under this sub-paragraph) may be done by—
- (a) a member of the CMA Board, or a member of staff of the CMA, who has been authorised for that purpose by the CMA Board, whether generally or specifically;
  - (b) a committee or sub-committee of the CMA Board that has been so authorised.
- (2) Sub-paragraph (1) does not apply to the functions of deciding—
- (a) whether the duty to publish a market study notice under section 130A of the Enterprise Act 2002 applies;
  - (b) whether to propose to make, or to make, a reference under section 131 of that Act;
  - (c) for the purposes of the requirement imposed by section 131A(2)(b) of that Act, whether the CMA is proposing to make a decision as to whether to make a reference under section 131 of that Act in a way that is likely to have a substantial impact on the interests of any person;
  - (d) whether section 140A of that Act applies in respect of a particular case;
  - (e) whether to accept an undertaking under section 154 of that Act, or to vary or supersede or release an undertaking under that section;
  - (f) for the purposes of the requirement imposed by section 169(2) of that Act, whether the CMA is proposing to make a decision to make a reference under section 131 of that Act in a way that is likely to have a substantial impact on the interests of any person.
- (3) Sub-paragraph (1)(b) does not apply to a committee or sub-committee whose members include any person who is not a member of the CMA or of its staff.
- 30 Paragraph 29(1) is subject to provision in rules made under section 51 of the Competition Act 1998, by virtue of paragraph 1A of Schedule 9 to that Act, in respect of the exercise of a function of the CMA under Part 1 of that Act.

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### *Proceedings*

- 31 (1) The CMA Board may regulate its own proceedings.
- (2) The CMA Board must consult the Secretary of State before making or revising rules and procedures, under sub-paragraph (1), for dealing with—
- (a) conflicts of interest, or
  - (b) quorum.

### *Validity*

- 32 The validity of anything done by the CMA Board is not affected by—
- (a) a vacancy;
  - (b) a defective appointment.

### *Reference of matter to the chair*

- 33 (1) This paragraph applies where the CMA Board is to consider whether a matter should be referred to the chair for the constitution of a group under this Schedule.
- (2) Before the CMA Board considers whether to refer the matter to the chair, the chair must determine whether a person who is a member of the CMA Board might reasonably be expected to be a member of a group constituted in connection with the matter.
- (3) If the chair determines that a person who is a member of the CMA Board might reasonably be expected to be a member of such a group, that person is not to participate in the CMA Board's consideration of whether to refer the matter to the chair.

## **PART 3**

### THE CMA PANEL

#### *The CMA panel*

- 34 The CMA panel is a panel of persons available for selection as members of a group constituted in accordance with this Part of this Schedule.

#### *Membership of CMA panel*

- 35 (1) The CMA panel is to consist of—
- (a) at least one person (a “newspaper panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of a group constituted to carry out functions on behalf of the CMA with respect to a newspaper merger reference (a “newspaper merger reference group”);
  - (b) at least three persons (“specialist communications panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out functions on behalf of the CMA with respect to a specialist communications reference (a “specialist communications reference group”);

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- (c) at least six persons (“specialist utility panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out specialist utility functions on behalf of the CMA (a “specialist utility group”);
  - (d) at least one person (a “reporting panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of any group constituted to carry out functions on behalf of the CMA;
  - (e) any persons who are appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out functions with respect to a reference under article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1)).
- (2) A person who is appointed to the CMA panel as a member of a kind mentioned in one of paragraphs (a) to (e) of sub-paragraph (1) may also be appointed as a member of one or more of the other kinds mentioned in those paragraphs.
- (3) For the purposes of this paragraph and paragraph 38—
- a “newspaper merger reference” is—
    - (a) a reference under section 45 of the Enterprise Act 2002 that specifies a newspaper public interest consideration (within the meaning of paragraph 20A of Schedule 8 to that Act);
    - (b) a reference under section 62 of that Act that specifies a consideration specified in section 58(2A) or (2B) of that Act;
  - a “specialist communications reference” is a reference under section 193 of the Communications Act 2003;
  - “specialist utility functions” are functions with respect to—
    - (a) an appeal under section 23B, or a reference under section 41E, of the Gas Act 1986;
    - (b) an appeal under section 11C, or a reference under section 56C, of the Electricity Act 1989;
    - (c) a reference under section 12, 14 or 17K of the Water Industry Act 1991;
    - (d) the giving of a direction or the making of modifications under section 16A or 17P of that Act;
    - (e) an appeal under section 173 of the Energy Act 2004;
    - (f) a reference under article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172);
    - (g) the giving of a direction or the making of modifications under article 9 of that Order.

#### *Constitution of CMA groups*

- 36 Where the chair is, by or under any enactment, required to constitute a group under this Schedule (a “CMA group”), the chair must constitute the group in accordance with this Part of this Schedule.

#### *Membership of CMA groups*

- 37 (1) The members of a CMA group are to be selected by the chair.

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- (2) In selecting the members of a CMA group, the chair must comply with any requirements imposed by or under any enactment.
- (3) Subject to that, paragraph 38 has effect for the purposes of the membership of a CMA group.
- 38 (1) Each CMA group is to consist of at least three members of the CMA panel.
- (2) Subject to sub-paragraphs (3) to (6), those members are to be such persons as the chair may select.
- (3) In the case of a newspaper merger reference group—
- (a) the group must include at least one newspaper panel member;
  - (b) the members of the group (if any) who are not newspaper panel members must be reporting panel members.
- (4) In the case of a specialist communications reference group, the group must include at least one, but not more than three, of the specialist communications panel members.
- (5) In the case of a specialist utility group, the group must include at least one of the specialist utility panel members.
- (6) A newspaper panel member is not to be selected as a member of a CMA group that is not a newspaper merger reference group.
- (7) The chair may at any time appoint a reporting panel member to be an additional member of a CMA group.
- (8) The chair must appoint one of the members of a CMA group to chair the group (the “group chair”).
- 39 The validity of anything done by a CMA group is not affected by—
- (a) a vacancy;
  - (b) a defective appointment.

*Termination of person’s membership of a CMA group*

- 40 A member of the CMA panel may at any time resign from a CMA group by giving written notice to this effect to the chair.
- 41 (1) Sub-paragraph (2) applies if the chair considers that—
- (a) a member of a CMA group will be unable, for a substantial period, to perform his or her duties as a member of the group, or
  - (b) because of a particular interest of a member of a CMA group, it is inappropriate for him or her to remain a member of the group.
- (2) The chair may remove the person in question from membership of the group.
- 42 A person ceases to be a member of a CMA group on ceasing to be a member of the CMA panel.

*Replacement of a member of a CMA group*

- 43 (1) Sub-paragraph (2) applies if a person ceases to be a member of a CMA group, whether by being removed under paragraph 41, or otherwise.

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- (2) The chair may select a replacement member of the group from the CMA panel.

*Continuity on removal or replacement*

- 44 (1) A person's ceasing to be a member of a CMA group, whether by being removed under paragraph 41, or otherwise, does not prevent—
- (a) the group from continuing with anything begun before the person ceased to be a member of it;
  - (b) any decision made or direction given by the person while a member of the group from having effect after he or she has ceased to be a member of the group.
- (2) Sub-paragraph (1)—
- (a) applies whether or not a replacement member of the group is selected under paragraph 43;
  - (b) does not affect any requirements imposed by or under any enactment with respect to the constitution of a CMA group.

*Attendance of other members*

- 45 (1) At the invitation of the group chair of a CMA group, any reporting panel member who is not a member of the group may attend its meetings or otherwise take part in its proceedings.
- (2) But a person attending in response to such an invitation may not—
- (a) vote in any proceedings of the group, or
  - (b) have a statement of his or her dissent from a conclusion of the group included in a report made by the group.
- (3) Nothing in sub-paragraph (1) is to be taken to prevent a CMA group from consulting any member of the CMA panel with respect to any matter or question with which the group is concerned.

*Powers of chair pending group's constitution and first meeting*

- 46 (1) While a CMA group is being constituted, the chair may take such steps as he or she considers appropriate to facilitate the work of the group once it has been constituted.
- (2) The steps taken must be steps that it would be within the power of the group to take, had it already been constituted.
- 47 (1) The chair may, on behalf of the CMA, exercise the power conferred by section 37(1), 48(1) or 64(1) of the Enterprise Act 2002 in respect of the reference of a matter—
- (a) while a CMA group is being constituted in connection with the reference;
  - (b) after a CMA group has been so constituted, but before it has held its first meeting.
- (2) Sections 34C, 46D and 62A of the Enterprise Act 2002 have effect subject to sub-paragraph (1).

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*Performance of functions of chair with respect to constitution etc of CMA group*

- 48 (1) A function of the chair that is specified in sub-paragraph (4) may, with the consent of the CMA Board, be exercised on behalf of the chair by—
- (a) a person who is a member of both the CMA panel and the CMA Board, or
  - (b) a member of the CMA panel designated by the Secretary of State (whether generally or specifically) for the purposes of this paragraph.
- (2) The consent referred to in sub-paragraph (1) must specify the identity of the person by whom a function of the chair is to be exercised.
- (3) It may be given—
- (a) by reference generally to functions specified in sub-paragraph (4);
  - (b) by reference to specific functions, or functions of a particular description;
  - (c) by reference generally to CMA groups;
  - (d) by reference to specific matters or specific CMA groups, or by reference to matters or CMA groups of a particular description.
- (4) The functions are—
- (a) the chair's functions under paragraph 33 and under this Part of this Schedule;
  - (b) the chair's functions by or under any other enactment in respect of the constitution of a CMA group;
  - (c) the chair's functions under—
    - (i) Schedule 4A to the Gas Act 1986;
    - (ii) Schedule 5A to the Electricity Act 1989;
    - (iii) Schedule 22 to the Energy Act 2004;
    - (iv) Schedule 2 to the Civil Aviation Act 2012.

*Independence of groups*

- 49 (1) In making decisions that they are required or permitted to make by virtue of any enactment, CMA groups must act independently of the CMA Board.
- (2) Nothing in sub-paragraph (1) prevents—
- (a) the CMA Board from giving information in its possession to a CMA group, or
  - (b) a CMA group giving information in its possession to the CMA Board.

*Casting votes*

- 50 If a CMA group's vote on any decision is tied, the group chair is to have a casting vote.

*Requirement to make rules of procedure for certain groups*

- 51 (1) The CMA Board must make rules of procedure for merger reference groups, market reference groups, and special reference groups.
- (2) Those rules are subject to any provision made by or under any enactment in respect of the procedure of a CMA group.
- (3) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.

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- (4) The CMA Board must publish rules made under this paragraph in whatever manner it considers appropriate for bringing them to the attention of those likely to be affected by them.
- (5) Subject to rules made under this paragraph, and to any provision made by or under any enactment, a CMA group of a type referred to in sub-paragraph (1) may determine its own procedure.
- (6) In this paragraph and paragraph 53—
- (a) “market reference group” means a CMA group constituted in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;
  - (b) “merger reference group” means a CMA group constituted in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45, or 62 of the Enterprise Act 2002;
  - (c) “special reference group” means a CMA group constituted in connection with a reference under—
    - (i) section 11 of the Competition Act 1980;
    - (ii) section 41E of the Gas Act 1986;
    - (iii) section 56C of the Electricity Act 1989;
    - (iv) section 12, 14 or 17K of the Water Industry Act 1991;
    - (v) article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));
    - (vi) section 13 of, or Schedule 4A to, the Railways Act 1993;
    - (vii) article 15 of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));
    - (viii) section 12 of the Transport Act 2000;
    - (ix) section 193 of the Communications Act 2003;
    - (x) article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172).
- 52 (1) In determining how to proceed in accordance with rules made for it by the CMA Board under paragraph 51(1), and in determining its own procedure under paragraph 51(5), a group must have regard to any guidance issued by the CMA Board.
- (2) Before issuing guidance for the purposes of this paragraph, or amending or revoking it, the CMA Board must consult such persons as it considers appropriate.
- 53 (1) Rules made under paragraph 51 may—
- (a) make different provision for different cases or different purposes;
  - (b) be varied or revoked by rules subsequently made under that paragraph.
- (2) They may in particular make provision—
- (a) for particular stages of a merger investigation, market investigation, or special investigation to be dealt with in accordance with a timetable and for revision of that timetable;
  - (b) as to the documents and information that must be given to a relevant group in connection with a merger investigation, market investigation or special investigation;

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- (c) as to the documents and information that a relevant group must give to other persons in connection with such an investigation.
- (3) Rules making provision as described in sub-paragraph (2)(a) or (2)(b) may, in particular, permit or require a relevant group to disregard documents or information given after a particular date.
- (4) Rules making provision as described in sub-paragraph (2)(c) may in particular make provision for the notification or publication of, and for consultation about, provisional findings of a relevant group.
- (5) Rules made under paragraph 51 may make provision as to the quorum of relevant groups.
- (6) They may make provision—
- (a) as to the extent (if any) to which persons interested or claiming to be interested in a matter under consideration that is specified or described in the rules are allowed—
    - (i) to be present before or heard by a relevant group, either by themselves or by their representatives;
    - (ii) to cross-examine witnesses;
    - (iii) otherwise to take part;
  - (b) as to the extent (if any) to which sittings of a relevant group are to be held in public;
  - (c) generally in connection with any matters permitted by rules making provision as described in paragraph (a) or (b) (including, in particular, provision for a record of any hearings).
- (7) Rules made under paragraph 51 may make provision for—
- (a) the notification or publication of information relating to merger investigations, market investigations or special investigations;
  - (b) consultation about such investigations.
- (8) Rules made under paragraph 51 for market reference groups may make provision as to the involvement of any public interest expert in the market investigation in connection with the reference under section 140A of the Enterprise Act 2002 in relation to which the expert was appointed.
- (9) For the purposes of this paragraph—
- “market investigation” means an investigation carried out by a market reference group in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;
- “merger investigation” means an investigation carried out by a merger reference group in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45, or 62 of the Enterprise Act 2002;
- “public interest expert” means a person appointed under section 141B of the Enterprise Act 2002 in relation to a reference under section 140A(6) of that Act;
- “relevant group” means a market reference group, a merger reference group, or a special reference group;
- “special investigation” means an investigation carried out by a special reference group in connection with a provision listed in paragraph 51(6)(c).



*Procedure of other CMA groups*

- 54 (1) Subject to any special or general directions given by the Secretary of State, and to any provision made by or under any enactment, a CMA group that is not a group of a type referred to in paragraph 51(1) may determine its own procedure.
- (2) It may, in particular, determine its quorum, and determine—
- (a) the extent (if any) to which persons interested or claiming to be interested in a matter under consideration are allowed—
    - (i) to be present before or heard by it, either by themselves or by their representatives;
    - (ii) to cross-examine witnesses;
    - (iii) otherwise to take part;
  - (b) the extent (if any) to which its sittings are to be held in public.
- (3) In determining its procedure under sub-paragraph (1), a CMA group must have regard to any guidance issued by the CMA Board.

*CMA group decision: requirement for two thirds majority*

- 55 For the purposes of paragraphs 56 to 58, a “qualifying majority decision” is a decision made by a CMA group which is that of at least two-thirds of the members of the group.
- 56 (1) This paragraph applies for the purposes of Part 3 of the Enterprise Act 2002.
- (2) Where a decision of a CMA group under section 35(1) or 36(1) of that Act that there is an anti-competitive outcome is not a qualifying majority decision, it is to be treated as a decision under that section that there is not an anti-competitive outcome.
- (3) Where a decision of a CMA group under section 47 of that Act is not a qualifying majority decision—
- (a) in the case of a decision that a relevant merger situation has been created, it is to be treated as a decision under section 47 that no such situation has been created;
  - (b) in the case of a decision that the creation of a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods and services, it is to be treated as a decision under section 47 that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
  - (c) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it is to be treated as a decision under section 47 that no such arrangements are in progress or in contemplation;
  - (d) in the case of a decision that the creation of such a situation as is mentioned in paragraph (c) may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods and services, it is to be treated as a decision under section 47 that the creation of that situation may be expected not to result in such a substantial lessening of competition.
- (4) Where a decision of a CMA group under section 63 of that Act is not a qualifying majority decision—

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- (a) in the case of a decision that a special merger situation has been created, it is to be treated as a decision under section 63 that no such situation has been created;
    - (b) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it is to be treated as a decision under section 63 that no such arrangements are in progress or in contemplation.
  - (5) Expressions used in this paragraph are to be construed in accordance with Part 3 of the Enterprise Act 2002.
- 57
- (1) This paragraph applies for the purposes of Part 4 of the Enterprise Act 2002.
  - (2) Where a decision under section 134, 141 or 141A of that Act is not a qualifying majority decision—
    - (a) in the case of a decision on an ordinary reference that a feature or combination of features of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom, it is to be treated as a decision that the feature or (as the case may be) combination of features of that relevant market does not prevent, restrict or distort such competition;
    - (b) in the case of a decision on a cross-market reference that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom, it is to be treated as a decision that that feature or (as the case may be) combination of features as it relates to goods or services of those descriptions does not prevent, restrict or distort such competition.
  - (3) Accordingly, a CMA group is to be treated as having decided under section 134, 141 or 141A that there is no adverse effect on competition in relation to an ordinary reference or a cross-market reference if—
    - (a) one or more than one decision of the group, in relation to the reference, is to be treated as mentioned in sub-paragraph (2)(a) or (as the case may be) (b), and
    - (b) there is, in relation to the reference, no other relevant decision of the group.
  - (4) “Relevant decision”, in sub-paragraph (3)(b), means—
    - (a) in relation to an ordinary reference, a decision that is not to be treated as mentioned in sub-paragraph (2)(a), and which is that a feature or combination of features of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom;
    - (b) in relation to a cross-market reference, a decision that is not to be treated as mentioned in sub-paragraph (2)(b), and which is that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

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- (5) Where a decision of a CMA group under section 141A of that Act is not a qualifying majority decision, in the case of a decision under section 141A(4) that the feature or combination of features in question operates or may be expected to operate against the public interest, it is to be treated as a decision under section 141A that the feature or combination of features in question does not operate nor may be expected to operate against the public interest.
- (6) Expressions used in this paragraph are to be construed in accordance with Part 4 of the Enterprise Act 2002.
- 58 A decision made by a CMA group is also subject to any other provision made by or under any enactment about decisions that are not qualifying majority decisions.

## PART 4

### INTERPRETATION AND TRANSITIONAL AND TRANSITORY PROVISION

#### *Interpretation*

- 59 (1) In this Schedule, “enactment” means—
- (a) an enactment contained in this or any other Act;
  - (b) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978;
  - (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (d) a Measure or Act of the National Assembly for Wales;
  - (e) an enactment contained in, or in an instrument made under, Northern Ireland legislation (within the meaning of the Interpretation Act 1978).
- (2) Any reference in this Schedule to an enactment includes a reference to an enactment whenever passed or made.
- 60 References in this Schedule to the commencement date are to the date on which section 25(3) comes into force.

#### *Members of the Competition Commission*

- 61 (1) This paragraph applies—
- (a) in relation to any appointments under paragraph 1(1)(b) to the CMA panel that are made before the abolition of the Competition Commission under section 26, to any person who is a panel member of the Competition Commission and whose term of office as such is not due to expire before the abolition of the Competition Commission under that section;
  - (b) in relation to any other appointment under paragraph 1(1)(b) to the CMA panel, to a person who was a panel member of the Competition Commission immediately prior to its abolition under section 26.
- (2) A person to whom this paragraph applies may be appointed under paragraph 1(1)(b) as a member of the CMA panel.
- (3) But the terms of the person’s appointment as a member of the CMA panel must not be such that the sum of the period of his or her office as a member of the CMA

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panel, and of the period of his or her office as a panel member of the Competition Commission (excluding any period when he or she also holds office as a member of the CMA panel), exceeds eight years.

- (4) Paragraph 4(1) applies for the purposes of the person's re-appointment as a member of the CMA panel as it does for the purposes of the re-appointment of a CMA panel member to whom this paragraph does not apply.
- (5) The power conferred by section 100 includes power to make provision for the appointment of panel members of the Competition Commission as members of the CMA panel, or for the re-appointment of persons who are appointed as members of the CMA panel by virtue of sub-paragraph (2), for the purpose of enabling anything in the process of being done by or on behalf of the Competition Commission immediately prior to its abolition to be completed by or on behalf of the CMA; and nothing in sub-paragraphs (1) to (4) restricts the provision that may be made for that purpose.
- 62 Except as provided for by paragraph 61, a person who holds or has held office as a panel member of the Competition Commission at any time prior to its abolition may not be appointed under paragraph 1(1)(b) as a member of the CMA panel.
- 63 References in paragraphs 61 and 62 to a panel member of the Competition Commission are to a person appointed as a member of the Competition Commission of a kind mentioned in paragraph 2(3) of Schedule 7 to the Competition Act 1998.

#### *Financial years of the CMA*

- 64 (1) If the duration of the period beginning with the commencement date and ending with the next 31 March is six months or more, the first financial year of the CMA is that period.
- (2) But if the duration of that period is less than six months, the first financial year of the CMA is the period beginning with the commencement date, and ending with the 31 March in the year following the next 31 March after the commencement date.
- (3) The subsequent financial years of the CMA are each successive period of 12 months.

#### *First annual plan of the CMA*

- 65 (1) The CMA is to publish its first annual plan within the period of three months beginning with the commencement date.
- (2) The first annual plan is to relate to the period beginning with the date of publication of the plan, and ending with the date on which the CMA's first financial year ends.

## SCHEDULE 5

Section 26(3)

### AMENDMENTS RELATED TO PART 3

#### PART 1

##### TRANSFER OF FUNCTIONS UNDER THE 1998 ACT TO THE CMA

- 1 The Competition Act 1998 is amended as follows.
- 2 In section 6 (block exemptions), in subsections (1) and (6), for “OFT” (in each place where it occurs) substitute “CMA”.
- 3 In section 8 (block exemptions: procedure), in subsections (1) to (3) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 4 In section 10 (parallel exemptions), in subsections (5), (7) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 5 (1) Section 25 (power to investigate) is amended as follows.
  - (2) In subsections (1) and (8) to (11), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In the heading, for “OFT” substitute “CMA”.
- 6 In section 26 (powers when conducting investigations), in subsections (1) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 7 In section 27 (power to enter business premises without a warrant), in subsections (1) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- 8 (1) Section 28 (power to enter business premises under a warrant) is amended as follows.
  - (2) In subsection (1)(b)(i), for “OFT” substitute “CMA”.
  - (3) In subsection (2)—
    - (a) for “OFT” (in each place where it occurs) substitute “CMA”, and
    - (b) for “OFT’s” substitute “CMA’s”.
- 9 In section 28A (power to enter domestic premises under a warrant), in subsections (1)(b)(i) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 10 In section 31 (decisions following an investigation), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 11 In section 31A (commitments), in subsections (1) to (4), for “OFT” (in each place where it occurs) substitute “CMA”.
- 12 In section 31B (effect of commitments under section 31A), in subsections (1) to (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 13 In section 31C (review of commitments), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 14 In section 31D (guidance), in subsections (1) to (3), (5), (6) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 15 In section 31E (enforcement of commitments), in subsection (1), for “OFT” (in each place where it occurs) substitute “CMA”.

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- 16 In section 32 (directions in relation to agreements), in subsection (1), for “OFT” substitute “CMA”.
- 17 In section 33 (directions in relation to conduct), in subsection (1), for “OFT” substitute “CMA”.
- 18 In section 34 (enforcement of directions), in subsection (1), for “OFT” substitute “CMA”.
- 19 In section 35 (interim measures), in subsections (1) to (4), (8) and (9), for “OFT” (in each place where it occurs) substitute “CMA”.
- 20 In section 36 (penalties), in subsections (1) to (5), (8) and (9), for “OFT” (in each place where it occurs) substitute “CMA”.
- 21 In section 37 (recovery of penalties), in subsection (1), for “OFT” (in each place where it occurs) substitute “CMA”.
- 22 In section 38 (the appropriate level of a penalty), in subsections (1) to (3), (5), (6), (8) and (9), for “OFT” (in each place where it occurs) substitute “CMA”.
- 23 In section 39 (limited immunity in relation to the Chapter 1 prohibition), in subsections (3) to (5) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 24 In section 40 (limited immunity in relation to the Chapter 2 prohibition), in subsections (3) to (5) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 25 In section 44 (false or misleading information), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 26 In section 46 (appealable decisions), in subsections (1) to (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- 27 In section 47 (third party appeals), in subsection (1), for “OFT” (in each place where it occurs) substitute “CMA”.
- 28 In section 47A (monetary claims before Tribunal), in subsections (6) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 29 In section 50 (vertical agreements and land agreements), in subsection (3), for “OFT” substitute “CMA”.
- 30 In the cross-heading preceding section 51, for “OFT’s” substitute “CMA’s”.
- 31 (1) Section 51 (rules) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (2), for “OFT’s” substitute “CMA’s”.
- (4) In subsections (3) and (5) to (10), for “OFT” (in each place where it occurs) substitute “CMA”.
- 32 (1) Section 52 (advice and information) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “the Director” substitute “The CMA”.
- (3) In subsection (1A), for the words from the beginning to “the OFT” substitute “The CMA”.

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- (4) In subsections (2) to (6) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 33 In section 54 (regulators), in subsections (2), (5) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 34 In section 57 (defamation), for “OFT” substitute “CMA”.
- 35 In the cross-heading preceding section 58, for “OFT” substitute “CMA”.
- 36 (1) Section 58 (findings of fact) is amended as follows.
- (2) In subsection (1), for “an OFT’s” substitute “a CMA’s”.
- (3) In subsection (2)—
- (a) for “an OFT’s” substitute “a CMA’s”, and
- (b) for “OFT” (in each place where it occurs) substitute “CMA”.
- (4) In subsection (3), for “OFT” substitute “CMA”.
- (5) In the heading, for “OFT” substitute “CMA”.
- 37 In section 58A (findings of infringements), in subsections (3) and (4), for “OFT” (in each place where it occurs) substitute “CMA”.
- 38 (1) Section 59 (interpretation of Part 1) is amended as follows.
- (2) In subsection (1)—
- (a) after the definition of “the Chapter II prohibition” insert—
- ““the CMA” means the Competition and Markets Authority;”, and
- (b) omit the definition of “the OFT”.
- (3) In subsection (4), for “OFT” substitute “CMA”.
- 39 In section 60 (principles to be applied in determining questions), in subsection (4), for “OFT” (in each place where it occurs) substitute “CMA”.
- 40 In section 61 (interpretation of Part 2), in subsection (1)—
- (a) after the definition of “books and records” insert—
- ““the CMA” means the Competition and Markets Authority;”, and
- (b) omit the definition of “the OFT”.
- 41 In section 62 (power to enter business premises under a warrant: Article 20 inspections), in subsections (5) and (10), for “OFT” (in each place where it occurs) substitute “CMA”.
- 42 In section 62A (power to enter non-business premises under a warrant: Article 21 inspections), in subsections (3) to (5), and (12), for “OFT” (in each place where it occurs) substitute “CMA”.
- 43 In section 62B (powers when conducting Article 22(2) inspection), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 44 In section 63 (power to enter business premises under a warrant: Article 22(2) inspections), in subsections (1)(a), (2) to (5) and (10), for “OFT” (in each place where it occurs) substitute “CMA”.
- 45 (1) Section 65C (interpretation of Part 2A) is amended as follows.

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- (2) In subsection (1), in the definition of “Article 22(1) investigation”, for “OFT” substitute “CMA”.
- (3) In subsection (2)—
- (a) after the entry for “Article 82” insert—  
“the CMA”, and
  - (b) omit the entry for “the OFT”.
- (4) In subsection (4), for “OFT” substitute “CMA”.
- 46 In section 65D (power to conduct an Article 22(1) investigation), in subsection (1), for “OFT” substitute “CMA”.
- 47 In section 65E (powers when conducting Article 22(1) investigations), in subsections (1) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 48 In section 65F (power to enter business premises without a warrant), in subsections (1) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- 49 In section 65G (power to enter business premises under a warrant), in subsections (1)(b)(i) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 50 In section 65H (power to enter domestic premises under a warrant), in subsections (1)(b)(i) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 51 In section 65N (false or misleading information), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 52 In section 75A (rules in relation to Parts 2 and 2A), in subsections (1) to (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 53 (1) Schedule 1 (exclusions: mergers and concentrations) is amended as follows.
- (2) In paragraph 4, in sub-paragraphs (1) to (5), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In paragraph 5, for “OFT” (in each place where it occurs) substitute “CMA”.
- 54 In Schedule 2 (exclusions: other competition scrutiny), in Part 3, in paragraph 5(3) (a), for “Director” substitute “CMA”.
- 55 (1) Schedule 3 (general exclusions) is amended as follows.
- (2) In paragraph 9, in sub-paragraphs (3) to (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 56 (1) Schedule 6A (commitments) is amended as follows.
- (2) In paragraph 1, for “OFT” substitute “CMA”.
  - (3) In paragraph 2—
    - (a) in sub-paragraph (1), for “OFT” substitute “CMA”, and
    - (b) in sub-paragraph (2)—
      - (i) for “OFT” (in each place where it occurs) substitute “CMA”, and
      - (ii) for “OFT’s” substitute “CMA’s”.
  - (4) In paragraph 3, in sub-paragraph (1), for “OFT” substitute “CMA”.



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- (5) In paragraph 4, for “OFT” (in each place where it occurs) substitute “CMA”.
  - (6) In paragraph 5, for “OFT” substitute “CMA”.
  - (7) In paragraph 6, for “OFT” substitute “CMA”.
  - (8) In paragraph 7, for “OFT” (in each place where it occurs) substitute “CMA”.
  - (9) In paragraph 8, for “OFT” (in each place where it occurs) substitute “CMA”.
  - (10) In paragraph 10, for “OFT” substitute “CMA”.
  - (11) In paragraph 11, in sub-paragraph (1), for “OFT” substitute “CMA”.
  - (12) In paragraph 12, for “OFT” substitute “CMA”.
  - (13) In paragraph 13, for “OFT” substitute “CMA”.
  - (14) In paragraph 14, for “OFT” (in each place where it occurs) substitute “CMA”.
- 57 (1) Schedule 8 (appeals) is amended as follows.
- (2) In paragraph 2, in sub-paragraph (2), for “OFT’s” substitute “CMA’s”.
  - (3) In paragraph 3, in sub-paragraphs (2) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (4) In paragraph 3A, in sub-paragraph (3), for “OFT” substitute “CMA”.
- 58 (1) Schedule 9 (rules under section 51) is amended as follows.
- (2) In the heading, for “OFT’s” substitute “CMA’s”.
  - (3) In paragraph 1, for “OFT” substitute “CMA”.
  - (4) In paragraph 5, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraph 8, for “OFT” (in each place where it occurs) substitute “CMA”.
  - (6) In paragraph 9, for “OFT” (in each place where it occurs) substitute “CMA”.
  - (7) In paragraph 11, for “OFT” substitute “CMA”.
  - (8) In paragraph 12, in sub-paragraph (1)—
    - (a) for “OFT” substitute “CMA”, and
    - (b) for “OFT’s” substitute “CMA’s”.
  - (9) In paragraph 13—
    - (a) for “OFT” substitute “CMA”, and
    - (b) for “OFT’s” substitute “CMA’s”.
  - (10) In paragraph 14, for “OFT” substitute “CMA”.

## PART 2

### TRANSFER OF FUNCTIONS UNDER THE 2002 ACT TO THE CMA

- 59 The Enterprise Act 2002 is amended as follows.

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### *Part 1*

- 60 (1) Section 5 (acquisition of information etc) is amended as follows.
- (2) In subsections (1), (2) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In the italic cross-heading preceding the section for “OFT” substitute “the CMA”.
- 61 In section 6 (provision of information etc to the public), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 62 (1) Section 7 (provision of information and advice to Ministers etc) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 63 Omit section 8 (promoting good consumer practice).
- 64 (1) Section 11 (super-complaints) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (3), for “OFT’s” substitute “CMA’s”.
- (4) In subsection (7), for “OFT” substitute “CMA”.
- 65 For the title to Part 1 substitute “General functions of the CMA”.

### *Part 2*

- 66 In Schedule 4 (Competition Appeal Tribunal: procedure), in Part 2 (Tribunal rules), in paragraph 22(2), for “OFT” substitute “CMA”.

### *Part 3*

- 67 (1) Section 22 (duty to make references in relation to completed mergers) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “The CMA shall, subject to subsections (2) and (3), make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes that it is or may be the case that—”.
- (3) In subsection (2)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”, and
- (b) in paragraph (a), omit “to the Commission”.
- (4) In subsections (3) and (3A), for “OFT” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (7)—
- (a) in paragraph (a), for “the OFT or (as the case may be) the Commission” substitute “the CMA”, and
- (b) in paragraph (b), for “the OFT, the Commission” substitute “the CMA”.

- 68 In section 23 (relevant merger situations), in subsection (9), in paragraph (a), for  
“Commission” substitute “CMA”.
- 69 In section 24 (time-limits and prior notice), in subsection (2), for “OFT” (in each  
place where it occurs) substitute “CMA”.
- 70 In section 25 (extension of time-limits), in subsections (1) to (6) and (8), for  
“OFT” (in each place where it occurs) substitute “CMA”.
- 71 In section 28 (turnover test), in subsection (5), for “OFT” substitute “CMA”.
- 72 (1) Section 33 (duty to make references in relation to anticipated mergers) is amended  
as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “The CMA shall,  
subject to subsections (2) and (3), make a reference to its chair for the constitution  
of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if  
the CMA believes that it is or may be the case that—”.
- (3) In subsection (2)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”,
- (b) in paragraph (a), omit “to the Commission”, and
- (c) in paragraph (b), omit “to the Commission”.
- (4) In subsections (3) and (3A), for “OFT” (in each place where it occurs) substitute  
“CMA”.
- 73 (1) Section 34A (duty where case referred by the European Commission) is amended  
as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (2)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”, and
- (b) in paragraph (a), omit “to the Commission”.
- (4) In subsection (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- (5) In the heading, for “OFT” substitute “CMA”.
- 74 Before section 35 (but after the italic cross-heading immediately preceding it)  
insert—

### **“34C Functions to be exercised by CMA groups**

#### **“34C Functions to be exercised by CMA groups**

- (1) Where a reference is made to the chair of the CMA under section 22 or  
33 for the constitution of a group under Schedule 4 to the Enterprise and  
Regulatory Reform Act 2013, the functions of the CMA under or by virtue  
of the following provisions of this Part in relation to the matter concerned  
are to be carried out on behalf of the CMA by the group so constituted—
- (a) sections 35 to 41B, except for sections 35(6) and (7), 36(5) and (6)  
and 37(6);
- (b) where a reference is treated by virtue of section 37(2) as having been  
made under section 22, section 23(9)(a);

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- (c) section 76, as it applies in relation to orders under section 83, and sections 77, 78 and 80 to 84;
  - (d) section 87, so far as relating to an enforcement order made on behalf of the CMA by the group;
  - (e) sections 92(4), 94 and 94A, so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
  - (f) section 104, so far as relating to a decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
  - (g) section 107, so far as relating to anything done on behalf of the CMA by the group;
  - (h) section 109, where the permitted purpose in question relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;
  - (i) sections 110 to 115, so far as relating to a notice given under section 109 on behalf of the CMA by the group;
  - (j) section 120(5)(b), so far as relating to a decision of the group;
  - (k) Schedule 10, so far as relating to an enforcement undertaking or enforcement order which the group is considering accepting or making, or which the group has accepted or made, on behalf of the CMA.
- (2) The functions of the CMA under section 95(4) in relation to the matter concerned may be carried out on behalf of the CMA by the group.
- (3) Nothing in subsection (1) prevents the CMA Board from exercising a function of the CMA under or by virtue of the following provisions of this Part where the group constituted as mentioned in subsection (1) has ceased to exist—
- (a) section 76 and Schedule 10, so far as relating to the making of an order under section 76 in relation to an order under section 83;
  - (b) section 83 and Schedule 10, so far as relating to the making of an order under section 83;
  - (c) sections 76 (as it applies in relation to an order under section 83), 80 to 84 and Schedule 10, so far as relating to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
  - (d) section 87;
  - (e) sections 92(4) and 94.”
- 75 In section 35 (questions to be decided in relation to completed mergers), in subsections (1) and (3) to (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- 76 In section 36 (questions to be decided in relation to anticipated mergers), in subsections (1) to (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- 77 (1) Section 37 (cancellation and variation of references under section 22 or 33) is amended as follows.

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- (2) In subsections (1) to (4), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (6), for “OFT” substitute “CMA”.
  - (4) Omit subsections (7) and (8).
  - (5) In subsection (9)—
    - (a) for “OFT” substitute “CMA”, and
    - (b) for “Commission” substitute “CMA”.
- 78 (1) Section 38 (investigations and reports on references under section 22 or 33) is amended as follows.
- (2) In subsections (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) Omit subsection (4).
- 79 In section 39 (time-limits for investigations and reports), in subsections (1), (3), (4) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.
- 80 In section 40 (section 39: supplementary), in subsections (10), (11) and (13), for “Commission” (in each place where it occurs) substitute “CMA”.
- 81 In section 41 (duty to remedy effects of completed or anticipated mergers), in subsections (1) to (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 82 (1) Section 42 (intervention by Secretary of State in certain public interest cases) is amended as follows.
- (2) In subsection (2), for “OFT” substitute “CMA”.
  - (3) In subsection (6)—
    - (a) for “OFT” (in each place where it occurs) substitute “CMA”, and
    - (b) for “Commission” substitute “CMA”.
- 83 (1) Section 43 (intervention notices under section 42) is amended as follows.
- (2) In subsection (4)—
    - (a) in paragraph (a), for “OFT” substitute “CMA”, and
    - (b) for “Commission” (in each place where it occurs) substitute “CMA”.
- 84 (1) Section 44 (investigation and report) is amended as follows.
- (2) In subsections (2) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (4) —
    - (a) in the words before paragraph (a), for “OFT” substitute “CMA”, and
    - (b) in paragraph (c), omit “to the Commission”.
  - (4) In subsections (5), (5A) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In the heading, for “OFT” substitute “CMA”.
- 85 (1) Section 45 (power of Secretary of State to refer matter) is amended as follows.

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- (2) In subsection (1), in paragraph (b), for “OFT” substitute “CMA”.
- (3) In subsections (2) to (5), for “to the Commission” (in each place where it occurs) substitute “to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013”.
- (4) In the heading, for “Commission” substitute “CMA”.
- 86 In section 46 (references under section 46: supplementary), in subsection (2), for “OFT” substitute “CMA”.
- 87 (1) Section 46A (cases referred by European Commission where intervention notice is in force) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (2), in paragraph (a), omit “to the Commission”.
- 88 Before section 47 (but after the italic cross-heading immediately preceding it) insert—

**“46D Functions to be exercised by CMA groups**

**“46D Functions to be exercised by CMA groups**

Where a reference is made to the chair of the CMA under section 45 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—

- (a) sections 47 to 53;
  - (b) where a reference is treated by virtue of section 49(1) as having been made under section 45(2) or (3), section 23(9)(ab) (as it has effect by virtue of section 42(6));
  - (c) sections 104, so far as relating to any decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section, and 104A;
  - (d) section 107, so far as relating to anything done on behalf of the CMA by the group;
  - (e) section 109, where the permitted purpose relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;
  - (f) sections 110 to 115, so far as relating to a notice given under section 109 on behalf of the CMA by the group;
  - (g) section 118(4);
  - (h) section 120(5)(b), so far as relating to a decision of the group.”
- 89 In section 47 (questions to be decided on references under section 45), in subsections (1) to (11), for “Commission” (in each place where it occurs) substitute “CMA”.
- 90 In section 48 (cases where references on certain questions need not be decided), in subsections (1) to (3) for “Commission” (in each place where it occurs), substitute “CMA”.

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- 91 In section 49 (variation of references under section 45), in subsections (1) to (4) and (7) to (9), for “Commission” (in each place where it occurs) substitute “CMA”.
- 92 In section 50 (investigations and reports on references under section 45), in subsections (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- 93 (1) Section 51 (time-limits for investigations and reports) is amended as follows.
- (2) In subsections (1) to (4) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission” substitute “CMA”.
- 94 Section 52 (section 51: supplementary), in subsections (10), (11) and (13), for “Commission” (in each place where it occurs) substitute “CMA”.
- 95 (1) Section 53 (restrictions on action where public interest considerations not finalised) is amended as follows.
- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsection (2)—
- (a) omit “to the Commission”, and
- (b) for “Commission” substitute “CMA”.
- (4) In subsections (3) to (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 96 (1) Section 54 (decision of Secretary of State in public interest cases) is amended as follows.
- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsection (3), omit “to the Commission” (in each place where it occurs).
- (4) In subsections (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (7)—
- (a) omit “to the Commission” (in each place where it occurs),
- (b) for “of the Commission” (in each place where it occurs) substitute “of the CMA”, and
- (c) in paragraph (b)(ii), for “OFT” substitute “CMA”.
- 97 In section 55 (enforcement action by Secretary of State), in subsection (3), for “Commission” substitute “CMA”.
- 98 (1) Section 56 (competition cases where intervention on public interest grounds ceases) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (3)—
- (a) for “Commission” (in each place where it occurs) substitute “CMA”,
- (b) for “the report of the OFT” substitute “its report”, and
- (c) omit “to it by the OFT”.

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- (4) In subsection (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (6)—
- (a) for “Commission” substitute “CMA”, and
  - (b) omit “to it”.
- (6) In subsection (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- (7) In subsection (8)—
- (a) for “Commission” substitute “CMA”,
  - (b) after “(6)” insert “—  
(a)”,
  - (c) omit “to the Commission by the OFT”, and
  - (d) at the end insert “; and  
(b) for the purposes of section 34C, the group constituted in consequence of the reference under section 45 is to be treated as if it were constituted in consequence of a reference under section 22 or (as the case may be) 33.”
- 99 (1) Section 57 (duties of authorities to inform Secretary of State) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (2)—
- (a) for “OFT, OFCOM and the Commission” substitute “CMA and OFCOM”, and
  - (b) for “OFT, OFCOM or (as the case may be) the Commission” substitute “CMA or (as the case may be) OFCOM”.
- (4) In the heading, for “OFT and Commission” substitute “CMA and OFCOM”.
- 100 In section 58 (specified considerations), in subsection (4)(b) for “OFT, OFCOM, the Commission” substitute “CMA, OFCOM”.
- 101 (1) Section 59 (intervention by Secretary of State in special public interest cases) is amended as follows.
- (2) In subsection (2), for “OFT” substitute “CMA”.
- (3) In subsection (6)—
- (a) for “OFT” (in each place where it occurs) substitute “CMA”, and
  - (b) for “Commission” substitute “CMA”.
- 102 (1) Section 60 (special intervention notices under section 59) is amended as follows.
- (2) In subsection (4)—
- (a) in paragraph (a), for “OFT” substitute “CMA”, and
  - (b) for “Commission” (in each place where it occurs) substitute “CMA”.
- 103 (1) In section 61 (initial investigation and report) is amended as follows.
- (2) In subsections (2) to (4A) and (6), for “OFT” (in each place where it occurs) substitute “CMA”.



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- (3) In the heading, for “OFT” substitute “CMA”.
- 104 (1) Section 62 (power of Secretary of State to refer matter) is amended as follows.
- (2) In subsection (1), in paragraph (b), for “OFT” substitute “CMA”.
- (3) In subsections (2) and (3), for “to the Commission” (in each place where it occurs), substitute “to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013”.
- (4) In subsection (5), for “OFT” substitute “CMA”.
- 105 Before section 63 insert—

### “62A Functions to be exercised by CMA groups

#### “62A Functions to be exercised by CMA groups

Where a reference is made to the chair of the CMA under section 62 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—

- (a) sections 63 to 65;
  - (b) where a reference is treated by virtue of section 64(2) as having been made under section 62(2), section 23(9)(ab) (as it has effect by virtue of section 59(6));
  - (c) sections 104, so far as relating to any decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section, and 104A;
  - (d) section 107, so far as relating to anything done on behalf of the CMA by the group;
  - (e) section 109, where the permitted purpose relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;
  - (f) sections 110 to 115, so far as relating to a notice given under section 109 on behalf of the CMA by the group;
  - (g) section 118(4);
  - (h) section 120(5)(b), so far as relating to a decision of the group.”
- 106 In section 63 (questions to be decided on references under section 62), in subsections (1) to (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 107 In section 64 (cancellation and variation of references under section 62), in subsections (1) to (4) and (7) to (9), for “Commission” (in each place where it occurs) substitute “CMA”.
- 108 In section 65 (investigations and reports on references under section 62), in subsections (1) to (2A) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 109 In section 66 (decision and enforcement action by Secretary of State), in subsections (1) to (4) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.

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- 110 In section 67 (intervention to protect legitimate interests), in subsections (2) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.
- 111 In section 68 (scheme for protecting legitimate interests), in subsection (4)—
- (a) in paragraph (b), for “OFT” substitute “CMA”,
  - (b) in paragraph (c), for “to the Commission” substitute “to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013”, and
  - (c) in paragraph (d), for “the Commission” substitute “the CMA, acting through a group so constituted.”.
- 112 In section 72 (initial enforcement orders), in subsections (2), (6) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 113 In section 73 (undertakings in lieu of references), in subsections (1) to (4), (5) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 114 In section 74 (effect of undertakings under section 73), in subsections (1), (2) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 115 In section 75 (order making power where undertakings under section 73 not fulfilled), in subsections (1), (2), (4) and (6), for “OFT” (in each place where it occurs) substitute “CMA”.
- 116 (1) Section 76 (supplementary interim order-making power) is amended as follows
- (2) In subsection (1)—
    - (a) in paragraph (a), for “OFT” substitute “CMA”, and
    - (b) in paragraph (b), for “Commission” substitute “CMA”.
  - (3) In subsections (2), (3), (4) and (7), for “OFT or (as the case may be) the Commission” (in each place where it occurs) substitute “CMA”.
- 117 In section 77 (restrictions on certain dealings: completed mergers), in subsections (2), (3), (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- 118 In section 78 (restrictions on certain dealings: anticipated mergers), in subsections (2) to (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 119 (1) Section 79 (sections 77 and 78: further interpretation provisions) is amended as follows.
- (2) In subsection (1), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (4), for “OFT” substitute “CMA”.
- 120 (1) Section 80 (interim undertakings) is amended as follows.
- (2) In subsections (2), (5) and (9), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (10), for “Commission’s” substitute “CMA’s”.
- 121 (1) Section 81 (interim orders) is amended as follows.
- (2) In subsection (2), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (9), for “Commission” substitute “CMA”.

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- 122 In section 82 (final undertakings), in subsections (1), (2) and (5), for  
“Commission” (in each place where it occurs) substitute “CMA”.
- 123 (1) Section 83 (order-making powers where final undertakings not fulfilled) is amended  
as follows.
- (2) In subsection (1), in the words before paragraph (a), for “Commission” substitute  
“CMA”.
- (3) In that subsection, in paragraph (b)—
- (a) for “Commission or the OFT” substitute “CMA”, and
- (b) for “Commission decided” substitute “CMA decided”.
- (4) In subsections (2) and (4), for “Commission” (in each place where it occurs)  
substitute “CMA”.
- (5) Omit subsection (6).
- 124 (1) Section 84 (final orders) is amended as follows.
- (2) In subsections (1) and (2), for “Commission” (in each place where it occurs)  
substitute “CMA”.
- (3) Omit subsection (4).
- 125 In section 85 (enforcement regime for public interest and special interest cases), in  
subsection (2), for “OFT” substitute “CMA”.
- 126 (1) Section 91 (register of undertakings and orders) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute  
“CMA”.
- (3) In subsection (3)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”, and
- (b) in paragraph (d), for “Commission” substitute “CMA”.
- (4) In subsection (4), for “OFT” substitute “CMA”.
- (5) In subsection (5)—
- (a) for “Commission and the Secretary of State” substitute “Secretary of State”,
- (b) for “OFT” substitute “CMA”, and
- (c) for “by them” (in each place where it occurs) substitute “by the Secretary  
of State”.
- (6) In subsections (6) and (7), for “OFT” (in each place where it occurs) substitute  
“CMA”.
- 127 In the italic cross-heading preceding section 92, for “OFT” substitute “CMA”.
- 128 (1) Section 92 (duty to monitor undertakings and orders) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute  
“CMA”.
- (3) In subsection (3)—
- (a) in the words before paragraph (a)—
- (i) for “OFT” substitute “CMA”, and

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- (ii) omit “the Commission or (as the case may be)”,
  - (b) in paragraph (a)—
    - (i) omit “the Commission or (as the case may be)”, and
    - (ii) omit “it (or as the case may be)”, and
  - (c) in paragraphs (b) to (d), omit “the Commission or (as the case may be)” (in each place where it occurs).
- (4) In subsections (4) to (6), for “OFT” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (7)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”,
  - (b) omit paragraph (a), and
  - (c) in paragraph (b), for “the report” substitute “any report prepared by it under subsection (6)”.
- (6) In the heading, for “OFT” substitute “CMA”.
- 129 (1) Section 93 (further role in relation to undertakings and orders) is amended as follows.
- (2) In subsection (1), omit paragraph (a) and the word “or” immediately following it.
- (3) In subsection (2)—
- (a) for the words from the beginning to “authority”)” substitute “The Secretary of State”,
  - (b) for “OFT” substitute “CMA”,
  - (c) for “relevant authority” (in each place where it occurs) substitute “Secretary of State”, and
  - (d) omit “section 80 or 82 or (as the case may be)”.
- (4) In subsection (3)—
- (a) for “relevant authority” (in each place where it occurs) substitute “Secretary of State”,
  - (b) for “OFT” substitute “CMA”, and
  - (c) for “OFT’s” substitute “CMA’s”.
- (5) In subsection (4)—
- (a) for “OFT” substitute “CMA”,
  - (b) for “relevant authority” substitute “Secretary of State”, and
  - (c) omit “section 80 or 82 or (as the case may be)”.
- (6) In subsection (6)—
- (a) for “relevant authority” substitute “Secretary of State”, and
  - (b) for “OFT” substitute “CMA”.
- (7) In the heading, for “OFT” substitute “CMA”.
- 130 (1) Section 94 (rights to enforce undertakings and orders) is amended as follows.
- (2) In subsection (6), for “OFT” substitute “CMA”.
- (3) Omit subsection (7).
- 131 (1) Section 95 (rights to enforce statutory restrictions) is amended as follows.
- (2) In subsection (4), for “OFT or the Commission” substitute “CMA”.

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- (3) In subsection (5), for “OFT” substitute “CMA”.
- 132 (1) Section 96 (merger notices) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (5), for “OFT” substitute “CMA”.
- 133 (1) Section 99 (certain functions in relation to merger notices) is amended as follows.
- (2) In subsection (1), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “OFT and Secretary of State” substitute “CMA”.
- 134 In section 100 (exceptions to protection given by merger notices), in subsection (1), for “OFT” (in each place where it occurs) substitute “CMA”.
- 135 (1) Section 104 (certain duties of relevant authorities to consult) is amended as follows.
- (2) In subsection (6), in the definition of “relevant authority” for “OFT, the Commission” substitute “CMA”.
- (3) In that subsection, in the definition of “relevant decision”—
- (a) for “OFT” (in each place where it occurs) substitute “CMA”,
- (b) in paragraph (a), after sub-paragraph (ii) insert “; or  
(iii) on the questions mentioned in section 35(1) or (3),  
36(1) or (2), 47 or 63;”, and
- (c) omit paragraph (b).
- 136 In section 104A (public consultation in relation to media mergers), in subsections (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- 137 (1) Section 105 (general information duties) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (3)—
- (a) in the words before paragraph (a)—
- (i) for “OFT” substitute “CMA”, and
- (ii) omit “Commission or”,
- (b) in paragraph (a), omit “the Commission or (as the case may be)” (in each place where it occurs), and
- (c) in paragraph (b)—
- (i) omit “the Commission or (as the case may be)”, and
- (ii) for “OFT” substitute “CMA”.
- (4) In subsection (3A)—
- (a) in the words before paragraph (a), for “Commission or the OFT” substitute “CMA”, and
- (b) for “Commission or (as the case may be) the OFT” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (4)—
- (a) for “OFT” (in each place where it occurs) substitute “CMA”,

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- (b) for “the Commission or OFCOM” substitute “OFCOM”, and
  - (c) omit “the Commission or (as the case may be)” (in each place where it occurs).
- (6) In subsection (4A)—
- (a) for “Commission or the OFT” substitute “CMA”, and
  - (b) for “Commission or (as the case may be) the OFT” (in each place where it occurs) substitute “CMA”.
- (7) In subsection (5)—
- (a) in the words before paragraph (a), for “OFT, OFCOM and the Commission” substitute “CMA and OFCOM”, and
  - (b) in paragraph (b), for “OFT, OFCOM or (as the case may be) the Commission” substitute “CMA or (as the case may be) OFCOM”.
- (8) In subsection (6), for “OFT” (in each place where it occurs) substitute “CMA”.
- (9) In subsection (7)—
- (a) for “Commission” substitute “CMA”, and
  - (b) for “(3), (3A), (4) or (4A)” substitute “(3A) or (4A)”.
- (10) In subsection (7A), omit the words from “and the OFT” to the end of the subsection.
- (11) In the heading, for “OFT and Commission” substitute “CMA”.
- 138 (1) Section 106 (advice and information about references under sections 22 and 33) is amended as follows.
- (2) In subsection (1)—
- (a) omit “As soon as reasonably practicable after the passing of this Act.”,
  - (b) for “the OFT” substitute “The CMA”, and
  - (c) for the words from “the making” to the end of the subsection substitute “—
    - (a) the making and consideration by it of references under section 22 or 33, and
    - (b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.”
- (3) In subsection (2), for “OFT” substitute “CMA”.
- (4) Omit subsections (3) and (4).
- (5) In subsection (5), in paragraph (b), for “OFT or (as the case may be) the Commission” substitute “CMA”.
- (6) In subsection (6)—
- (a) omit “or (3)”, and
  - (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
- (7) In subsection (7)—
- (a) for “OFT or the Commission” substitute “CMA”, and
  - (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
- (8) In subsection (8), for “OFT shall consult the Commission and such other persons” substitute “CMA shall consult such persons”.

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- (9) Omit subsection (9).
- 139 In section 106A (advice and information in relation to media mergers), in subsection (5), for “OFT, OFCOM, the Commission” substitute “CMA, OFCOM”.
- 140 In section 106B (general advisory duties of OFCOM), in subsections (1) and (3), for “Commission” substitute “CMA”.
- 141 (1) Section 107 (further publicity requirements) is amended as follows.
- (2) In subsection (1)—
- (a) for “OFT” substitute “CMA”,
  - (b) in paragraph (e), omit “or 76”, and
  - (c) omit paragraphs (g) and (h).
- (3) In subsection (2), for “Commission shall” substitute “CMA shall also”.
- (4) In subsection (3)—
- (a) in paragraph (b), for “OFT” substitute “CMA”, and
  - (b) in paragraph (e), for “Commission” substitute “CMA”.
- (5) In subsection (9)—
- (a) in paragraph (a), for “OFT” substitute “CMA”, and
  - (b) in paragraph (b), for “Commission” substitute “CMA”.
- (6) In subsection (10)—
- (a) in paragraph (a), for “OFT” substitute “CMA”, and
  - (b) in paragraph (b), for “Commission” substitute “CMA”.
- (7) In subsection (11), for “Commission’s” substitute “CMA’s”.
- 142 In section 108 (defamation), for “OFT, OFCOM, the Commission” substitute “CMA, OFCOM”.
- 143 In section 109 (attendance of witnesses and production of documents etc.), in subsection (3)(a), for “the Commission” substitute “the CMA”.
- 144 In section 110 (enforcement of powers under section 109: general), in subsections (1) to (3), (6), (8) and (9), for “Commission” (in each place where it occurs) substitute “CMA”.
- 145 In section 111 (penalties), in subsections (1), (5) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.
- 146 In section 112 (penalties: main procedural requirements), in subsections (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- 147 In section 113 (payment and interest by instalments), in subsections (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 148 In section 114 (appeals in relation to penalties), in subsections (4), (5) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- 149 In section 115 (recovery of penalties), for “Commission” (in each place where it occurs) substitute “CMA”.
- 150 In section 116 (statement of policy), in subsections (1), (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.

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- 151 In section 117 (false or misleading information), in subsections (1) and (2), for “OFT, OFCOM, the Commission” (in each place where it occurs) substitute “CMA, OFCOM”.
- 152 (1) Section 118 (excisions from reports) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), for “OFT” substitute “CMA”, and
- (b) in paragraph (b), for “Commission” substitute “CMA”.
- (3) In subsection (5), for “Commission” substitute “CMA”.
- 153 (1) Section 119 (minority reports) is amended as follows.
- (2) In subsection (1)—
- (a) omit “in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41)”, and
- (b) for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission” substitute “CMA”.
- 154 (1) Section 119B (monitoring role in relation to media mergers) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “OFT” substitute “CMA”.
- 155 In section 120 (review of decisions under Part 3), in subsection (1)—
- (a) for “OFT” substitute “CMA”, and
- (b) for “the Secretary of State or the Commission” substitute “or the Secretary of State”.
- 156 (1) Section 121 (fees) is amended as follows.
- (2) In subsection (1)—
- (a) for “OFT of” substitute “CMA of”, and
- (b) for “OFT, OFCOM and the Commission” substitute “CMA and OFCOM”.
- (3) In subsections (3), (4) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- (4) In subsection (8)—
- (a) for “OFT in” substitute “CMA in”, and
- (b) for “OFT, OFCOM and the Commission” substitute “CMA and OFCOM”.
- (5) In subsection (9), for “OFT” substitute “CMA”.
- 157 (1) Section 122 (primacy of EU law) is amended as follows.
- (2) In subsection (1)—
- (a) omit “or (3)”, and
- (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
- (3) In subsection (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 158 Section 123 (power to alter share of supply test), in subsection (4), for “OFT and the Commission” substitute “CMA”.



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159 (1) Section 130 (index of defined expressions) is amended as follows.

(2) At the appropriate place in the table insert—

“The CMA	Section 273”
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(3) Omit the entries in the table for “The Commission” and “The OFT”.

(4) In the first column of the entry for “Reports of the Commission”, for “Commission” substitute “CMA”.

160 (1) Schedule 7 (enforcement regime for public interest and special interest cases) is amended as follows.

(2) In paragraph 2, in sub-paragraphs (2), (10) and (11), for “OFT” (in each place where it occurs) substitute “CMA”.

(3) In paragraph 3, in sub-paragraph (3), for “OFT” (in each place where it occurs) substitute “CMA”.

(4) In paragraph 4, in sub-paragraphs (2) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.

(5) In paragraph 5, in sub-paragraphs (1) and (6), for “OFT” (in each place where it occurs) substitute “CMA”.

(6) In paragraph 7, in sub-paragraphs (8) and (9), for “Commission” (in each place where it occurs) substitute “CMA”.

(7) In paragraph 8—

(a) in sub-paragraphs (7) and (8), for “Commission” (in each place where it occurs) substitute “CMA”, and

(b) in sub-paragraph (11), for “OFT” substitute “CMA”.

(8) In paragraph 10, in sub-paragraphs (1) and (6), for “OFT” (in each place where it occurs) substitute “CMA”.

(9) In paragraph 11, in sub-paragraph (5), for “OFT” substitute “CMA”.

161 (1) Schedule 8 (provision that may be contained in certain enforcement orders) is amended as follows.

(2) In paragraph 8, in sub-paragraph (3), for “Commission” substitute “CMA”.

(3) In paragraph 19, for “OFT” (in each place where it occurs) substitute “CMA”.

(4) In paragraph 24 —

(a) omit paragraph (a), and

(b) in paragraph (b), for “Commission” (in each place where it occurs) substitute “CMA”.

162 In Schedule 10 (procedural requirements for certain enforcement undertakings and orders), in paragraph 2(1), for “the OFT, the Commission” substitute “the CMA”.

#### Part 4

163 (1) Section 131 (power to make market investigation references) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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- (2) In subsection (1), for the words before “has reasonable grounds” substitute “The CMA may, subject to subsection (4), make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA”.
- (3) In the heading, for “OFT” substitute “CMA”.
- 164 (1) Section 132 (ministerial power to make market investigation references) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (3), for “Commission” substitute “chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013”.
- 165 In section 133 (contents of references), in subsection (2), for “Commission” substitute “group constituted by the chair of the CMA in respect of the reference”.
- 166 Before section 134 (but after the italic cross-heading immediately preceding it) insert—

**“133A Functions to be exercised by CMA groups**

**“133A Functions to be exercised by CMA groups**

- (1) Where a reference is made to the chair of the CMA under section 131, 132 or 140A for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—
- (a) sections 134 to 138B, except for section 135(1);
  - (b) sections 140B to 145, 148, 148A and 151;
  - (c) sections 157 and 158;
  - (d) section 159;
  - (e) section 160, except for subsection (6) of that section;
  - (f) section 161, except for subsection (5) of that section;
  - (g) section 162(4), so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
  - (h) section 164(2)(b), so far as relating to an enforcement order made on behalf of the CMA by the group;
  - (i) section 167, so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
  - (j) section 168;
  - (k) section 169, so far as relating to a decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
  - (l) section 172, so far as relating to anything done on behalf of the CMA by the group;
  - (m) section 174, where the permitted purpose in question relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;

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- (n) sections 174A to 174D, so far as relating to a notice given under section 174 on behalf of the CMA by the group;
    - (o) section 179(5)(b), so far as relating to a decision of the group;
    - (p) Schedule 10, so far as relating to an enforcement undertaking or enforcement order which the group is considering accepting or making, or which the group has accepted or made, on behalf of the CMA.
  - (2) Nothing in subsection (1) prevents the CMA Board from carrying out a function of the CMA under or by virtue of the following provisions of this Part where the group constituted as mentioned in subsection (1) has ceased to exist—
    - (a) section 160 and Schedule 10, so far as relating to the making of an order under section 160;
    - (b) sections 159 to 161 and Schedule 10, so far as relating to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
    - (c) section 162(4);
    - (d) section 164(2)(b);
    - (e) section 167.”
- 167 (1) Section 134 (questions to be decided on market investigation references) is amended as follows.
- (2) In subsections (1), (4), (6) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (8)(b), for “Commission, the Secretary of State or (as the case may be) the OFT” substitute “CMA or (as the case may be) the Secretary of State”.
- 168 (1) Section 135 (variation of references) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
  - (3) In subsection (2)—
    - (a) omit “OFT or (as the case may be) the”,
    - (b) for “Commission” substitute “CMA”, and
    - (c) after “reference” insert “made by him”.
  - (4) In subsection (3), for “Commission” substitute “CMA”.
- 169 (1) Section 136 (investigations and reports on market investigation references) is amended as follows.
- (2) In subsections (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) For subsection (4) substitute—
    - “(4) Where a reference has been made by the appropriate Minister under section 132 the CMA shall, at the same time as the report under this section is published, give it to the appropriate Minister.”
  - (4) In subsection (5)—
    - (a) for “OFT” substitute “CMA”, and

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- (b) for “Commission” substitute “CMA”.
- (5) Omit subsection (6).
- 170 In section 137 (time-limits for market investigations and reports), in subsections (1), (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- 171 In section 138 (duty to remedy adverse effects), in subsections (1) to (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- 172 In section 139 (public interest intervention by the Secretary of State), in subsection (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 173 In section 140 (intervention notices under section 139(1)), in subsection (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 174 In section 141 (questions to be decided), in subsections (2) and (3) to (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- 175 (1) Section 142 (investigations and reports) is amended as follows.
- (2) In subsections (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission” substitute “CMA”.
- 176 In section 143 (publication etc. of reports), in subsections (1), (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 177 In section 144 (time-limits for investigations and reports in public interest cases), in subsections (1), (4) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 178 In section 145 (restrictions where public interest considerations not finalised), in subsections (1) to (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 179 In section 146 (decision of Secretary of State), in subsections (2) to (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 180 In section 147 (remedial action by Secretary of State), in subsections (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- 181 (1) Section 148 (reversion of the matter) is amended as follows.
- (2) In subsections (1), (2), (6), (7) and (9), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (10), for “Commission’s” substitute “CMA’s”.
- 182 In section 149 (intervention notices under section 139(2)), in subsections (1) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 183 (1) Section 150 (power of veto of Secretary of State) is amended as follows.
- (2) In subsections (1) and (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (4), for “OFT’s” substitute “CMA’s”.
- 184 (1) Section 151 (further interaction of intervention notices with general procedure) is amended as follows.

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- (2) In subsection (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (4), for “Commission” (in the first place where it occurs) substitute “CMA”.
- (4) In subsection (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 185 (1) Section 152 (certain duties in relation to providing information) is amended as follows.
  - (2) In subsection (1), for “OFT” substitute “CMA”.
  - (3) In subsection (3)—
    - (a) for “OFT and the Commission” substitute “CMA”, and
    - (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
  - (4) In the heading, for “OFT and Commission” substitute “CMA”.
- 186 In section 153 (specified considerations for purposes of Part 4), in subsection (4)—
  - (a) for “OFT” substitute “CMA”,
  - (b) for “by the Secretary of State,” substitute “by the Secretary of State or”, and
  - (c) omit “or by the Commission”.
- 187 In section 154 (undertakings in lieu of market investigation references), in subsections (1) to (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 188 In section 155 (undertakings in lieu: procedural requirements), in subsections (1) to (4) and (6) to (9), for “OFT” (in each place where it occurs) substitute “CMA”.
- 189 In section 156 (effect of undertakings under section 154), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 190 In section 159 (final undertakings: Part 4), in subsections (1), (5) and (6) for “Commission” (in each place where it occurs) substitute “CMA”.
- 191 (1) Section 160 (order-making power where final undertakings not fulfilled: Part 4) is amended as follows.
  - (2) In subsection (1)(b), for “the relevant authority or the OFT” substitute “a relevant person”.
  - (3) After subsection (1) insert—
    - “(1A) In subsection (1), a “relevant person” means—
      - (a) in a case where the relevant authority is the CMA, the CMA;
      - (b) in a case where the relevant authority is the Secretary of State, the Secretary of State or the CMA.”
  - (4) In subsection (6), for the words from the beginning to “OFT” substitute “The Secretary of State shall not vary or revoke an order made by him under this section unless the CMA”.
  - (5) In subsection (7), in paragraph (a), for “Commission” (in each place where it occurs) substitute “CMA”.
- 192 (1) Section 161 (final orders: Part 4) is amended as follows.

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- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsection (5), for the words from the beginning to “OFT” substitute “The Secretary of State shall not vary or revoke an order made by him under this section unless the CMA”.
- 193 For the italic cross-heading before section 162 substitute “Undertakings and orders: monitoring, consultation and advice”.
- 194 (1) Section 162 (duty to monitor undertakings and orders: Part 4) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (3)—
- (a) in the words before paragraph (a)—
    - (i) for “OFT” substitute “CMA”, and
    - (ii) omit “the Commission or (as the case may be)”,
  - (b) in paragraph (a)—
    - (i) omit “the Commission or (as the case may be)”, and
    - (ii) omit “it (or as the case may be)”,
  - (c) in paragraphs (b) to (d), omit “the Commission or (as the case may be)” (in each place where it occurs), and
  - (d) in paragraph (e), for “167(6) to (8)” substitute “167(6) and (7)”.
- (4) In subsection (4)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”, and
  - (b) after paragraph (b) (but before the “or” following it) insert—
    - “(ba) any possible variation or release by it of an enforcement undertaking accepted by it;
    - (bb) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
    - (bc) any possible variation or revocation by it of an enforcement order made by it;
    - (bd) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;”.
- (5) In subsections (5) and (6), for “OFT” (in each place where it occurs) substitute “CMA”.
- (6) In subsection (7)—
- (a) in the words before paragraph (a), for “OFT” substitute “CMA”,
  - (b) omit paragraph (a), and
  - (c) in paragraph (b), for “the report” substitute “any report prepared by it under subsection (6)”.
- (7) In the heading, for “OFT” substitute “CMA”.
- 195 (1) Section 163 (further role in relation to undertakings and orders: Part 4) is amended as follows.

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- (2) In subsection (1)—
    - (a) omit “the Commission or”, and
    - (b) omit “(in this section “the relevant authority”)”.
  - (3) In subsection (2)—
    - (a) for “relevant authority” (in each place where it occurs) substitute “Secretary of State”, and
    - (b) for “OFT” substitute “CMA”.
  - (4) In subsection (3)—
    - (a) for “relevant authority” (in each place where it occurs) substitute “Secretary of State”,
    - (b) for “OFT” substitute “CMA”, and
    - (c) for “OFT’s” substitute “CMA’s”.
  - (5) In subsection (4)—
    - (a) for “OFT” substitute “CMA”, and
    - (b) for “relevant authority” substitute “Secretary of State”.
  - (6) In subsection (5)—
    - (a) for “relevant authority” (in each place where it occurs) substitute “Secretary of State”, and
    - (b) omit “itself”.
  - (7) In subsection (6)—
    - (a) for “relevant authority” substitute “Secretary of State”, and
    - (b) for “OFT” substitute “CMA”.
  - (8) For the heading substitute “Role of CMA in relation to undertakings and orders in public interest cases: Part 4”.
- 196 (1) Section 166 (register of undertakings and orders: Part 4) is amended as follows.
- (2) In subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (3)—
    - (a) in the words before paragraph (a), for “OFT” substitute “CMA”,
    - (b) in paragraph (a), omit “(whether by the Commission, the Secretary of State or a relevant sectoral regulator)”, and
    - (c) in paragraph (b), omit “(whether by the Commission, the Secretary of State or a relevant sectoral regulator)”.
  - (4) In subsection (4), for “OFT” substitute “CMA”.
  - (5) In subsection (5)—
    - (a) omit “Commission, the”, and
    - (b) for “OFT” substitute “CMA”.
  - (6) In subsections (6) and (7), for “OFT” (in each place where it occurs) substitute “CMA”.
- 197 (1) Section 167 (rights to enforce undertakings and orders under this Part) is amended as follows.

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- (2) In subsection (6), for “OFT” substitute “CMA”.
  - (3) In subsection (7)—
    - (a) after “accepted” insert “by the Secretary of State”,
    - (b) after “an order” insert “made by the Secretary of State”, and
    - (c) for “relevant authority” substitute “Secretary of State”.
  - (4) Omit subsection (8).
  - (5) In subsection (9), for “(6 to (8)” substitute “(6) and (7)”.
- 198 In section 168 (regulated markets), in subsections (1), (2), (6) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- 199 In section 169 (certain duties of relevant authorities to consult: Part 4), in subsection (6)—
- (a) in the definition of “relevant authority”, for “OFT, the appropriate Minister or the Commission” substitute “CMA, the appropriate Minister”,
  - (b) in the definition of “relevant decision”, in paragraph (a), in the opening words, for “OFT” (in each place where it occurs) substitute “CMA”,
  - (c) also in that paragraph of that definition, after sub-paragraph (ii) insert “; or—
    - (iii) on the questions mentioned in section 134, 141 or 141A; and”, and
  - (d) also in that definition, omit paragraph (c) and the word “and” preceding it.
- 200 (1) Section 170 (general information duties) is amended as follows.
- (2) Omit subsections (1) and (2).
  - (3) In subsection (3)—
    - (a) in the words before paragraph (a), for “OFT and the Commission” substitute “CMA”,
    - (b) in paragraph (a), for “their possession” substitute “its possession”, and
    - (c) in paragraph (b), for “OFT (or as the case may be) the Commission” substitute “CMA”.
  - (4) In subsection (4), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In subsection (5), omit the words from the beginning to “and the Secretary of State” and insert “The Secretary of State”.
- 201 (1) Section 171 (advice and information: Part 4) is amended as follows.
- (2) In subsection (1)—
    - (a) omit “As soon as reasonably practicable after the passing of this Act,”,
    - (b) for “the OFT” substitute “The CMA”, and
    - (c) for “the making of references by it under section 131” substitute “—
      - (a) the making and consideration by it of market investigation references, and
      - (b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.”
  - (3) In subsection (2), for “OFT” substitute “CMA”.



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*Status: This is the original version (as it was originally enacted).*

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- (4) Omit subsections (3) and (4).
  - (5) In subsection (5)(b), for “OFT or (as the case may be) the Commission” substitute “CMA”.
  - (6) In subsection (6)—
    - (a) omit “or (3)”, and
    - (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
  - (7) In subsection (7)—
    - (a) omit “or (3)”, and
    - (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
  - (8) In subsection (8)—
    - (a) for “OFT or the Commission” substitute “CMA”, and
    - (b) for “OFT or (as the case may be) the Commission” substitute “CMA”.
  - (9) In subsection (9), for “OFT shall consult the Commission and such other persons” substitute “CMA shall consult such persons”.
  - (10) Omit subsection (10).
- 202 (1) Section 172 (further publicity requirements: Part 4) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
  - (3) In subsection (2), for “Commission shall” substitute “CMA shall also”.
  - (4) In subsection (10), for “Commission’s” substitute “CMA’s”.
- 203 In section 173 (defamation)—
- (a) for “OFT” substitute “CMA”,
  - (b) for “by the Secretary of State,” substitute “by the Secretary of State or”, and
  - (c) omit “or by the Commission”.
- 204 In section 174 (investigatory powers), in subsections (3) to (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 205 In section 177 (excisions from reports: Part 4), in subsections (1), (4) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 206 (1) Section 178 (minority reports: Part 4) is amended as follows.
- (2) In subsection (1)—
    - (a) omit “in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41)”, and
    - (b) for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In the heading, for “Commission” substitute “CMA”.
- 207 In section 179 (review of decisions under Part 4), in subsection (1)—
- (a) for “OFT” substitute “CMA”, and
  - (b) for “, the Secretary of State or the Commission” substitute “or the Secretary of State”.
- 208 In section 183 (interpretation of Part 4), in subsection (3), for “Commission” (in each place where it occurs) substitute “CMA”.

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*Status: This is the original version (as it was originally enacted).*

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209 (1) Section 184 (index of defined expressions: Part 4) is amended as follows.

(2) At the appropriate place in the table insert—

“The CMA	Section 273”
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(3) Omit the entries in the table for “The Commission” and “The OFT”.

(4) In the first column of the entry in the table for “Reports of the Commission”, for “Commission” substitute “CMA”.

#### *Part 6*

210 In section 190 (cartel offence: prosecution), in subsections (2)(b) and (4), for “OFT” substitute “CMA”.

211 In section 192 (investigation of cartel offences), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.

212 In section 193 (powers when conducting an investigation), in subsections (1) to (4), for “OFT” (in each place where it occurs) substitute “CMA”.

213 In section 194 (power to enter premises under a warrant), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.

214 In section 195 (exercise of powers by authorised person), in subsection (1), for “OFT” (in both places where it occurs) substitute “CMA”.

215 In section 196 (privileged information etc), in subsection (2)(b), for “OFT” substitute “CMA”.

216 In section 201 (offences), in subsection (4)(a), for “OFT” substitute “CMA”.

#### *Part 11*

217 (1) Section 273 (interpretation) is amended as follows.

(2) For the definition of “the Commission” substitute—

““the CMA” means the Competition and Markets Authority;”.

(3) Omit the definition of “the OFT”.

### **PART 3**

#### **ABOLITION OF THE COMPETITION COMMISSION**

##### *Amendments of the 1998 Act*

218 The 1998 Act is amended as follows.

219 In the heading of Chapter 4 of Part 1, omit “The Competition Commission and”.

220 Omit section 45 (establishment of Competition Commission) and the cross- heading preceding it.

221 In section 59 (interpretation of Part 1), in subsection (1), in the definition of “the Commission”, omit “(except in relation to the Competition Commission)”.

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*Status: This is the original version (as it was originally enacted).*

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- 222 Omit Schedule 7 (Competition Commission).
- 223 Omit Schedule 7A (Competition Commission: procedural rules for mergers and markets refinances).

*Amendments of the 2002 Act*

- 224 The 2002 Act is amended as follows.
- 225 Omit sections 185 to 187 (the Competition Commission).
- 226 In Schedule 3 (the Competition Service), omit Part 2 (transfers of property etc between the Competition Commission and the Competition Service).
- 227 Omit Schedule 11 (the Competition Commission).
- 228 Omit Schedule 12 (Competition Commission: certain procedural rules).

**PART 4**

ABOLITION OF THE OFFICE OF FAIR TRADING

- 229 Omit sections 1 to 4 of, and Schedule 1 to, the 2002 Act (which make provision about the establishment of the Office of Fair Trading), and the italic cross-heading preceding section 1.

SCHEDULE 6

Section 26(4)

REGULATORY APPEALS ETC: MINOR AND CONSEQUENTIAL AMENDMENTS

**PART 1**

AMENDMENTS TO ACTS

*Competition Act 1980 (c. 21)*

- 1 The Competition Act 1980 is amended as follows.
- 2 (1) Section 11 (reference of public bodies and certain other persons to the Commission) is amended as follows.
- (2) In subsections (1), (5), (6), (8) and (10), for “Commission” (in each place where it occurs) substitute “CMA” .
- (3) After subsection (10) insert—
- “(10A) The functions of the CMA with respect to a reference under this section (including functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 11B) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
- (4) In the heading, for “Commission” substitute “CMA”.

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*Status: This is the original version (as it was originally enacted).*

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- 3 In section 11A (references under section 11: time-limits), in subsections (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- 4 (1) Section 11C (references under section 11: further supplementary provisions) is amended as follows.
- (2) In subsection (1), for the words from “the words” to the end, substitute “—
- (a) the words “, OFCOM or the Secretary of State” were omitted, and
- (b) for the words “their functions” there were substituted “its functions”.”
- (3) In subsection (3)—
- (a) for “Commission” substitute “CMA”, and
- (b) for the words from “in connection with” to the end, substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- 5 In section 12 (orders following report under section 11), in subsections (1) to (3) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 6 In section 16 (general provisions as to reports), in subsection (2), for “Commission” substitute “CMA”.
- 7 In section 17 (laying before Parliament and publication of reports), in subsection (6), for “Commission” substitute “CMA”.
- 8 In section 33 (short title, interpretation, etc), in subsection (2), for ““the Commission”” substitute ““the CMA””.

*Solicitors (Scotland) Act 1980 (c. 46)*

- 9 The Solicitors (Scotland) Act 1980 is amended as follows.
- 10 In section 25A (rights of audience in the Court of Session etc), in subsections (9) and (11), for “Director” (in each place where it occurs) substitute “CMA”.
- 11 (1) Section 64A (advisory and supervisory functions) is amended as follows.
- (2) In subsections (1) and (2), for “Director” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (3)—
- (a) for “Director has completed his consideration he” substitute “CMA has completed its consideration, the CMA”, and
- (b) for “he thinks” substitute “it thinks”.
- (4) In subsection (4), for “The Director may publish any advice given by him” substitute “The CMA may publish advice given”.
- (5) In subsection (5)—
- (a) for “Director” substitute “CMA”, and
- (b) for “Director’s” substitute “CMA’s”.
- (6) In subsection (6), for “Director” substitute “CMA”.
- (7) In the heading, for “Director General of Fair Trading” substitute “Competition and Markets Authority”.

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*Status: This is the original version (as it was originally enacted).*

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- 12 (1) Section 64C (investigatory powers) is amended as follows.
  - (2) In subsection (1)—
    - (a) for “Director” substitute “CMA”, and
    - (b) for “him” (in each place where it occurs) substitute “the CMA”.
  - (3) After subsection (2) insert—

“(2A) A notice under this section may be issued on the CMA’s behalf by any member of the CMA Board.”
  - (4) In the heading, for “Director” substitute “Competition and Markets Authority”.
- 13 In section 64CA (enforcement of notices under section 64C), in subsections (1) and (2), for “Office of Fair Trading” (in each place where it occurs) substitute “CMA”.
- 14 (1) In section 65 (interpretation), in subsection (1)—
  - (a) before the definition of “the Council” insert—

““the CMA” means the Competition and Markets Authority;  
“the CMA Board” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;”, and”
  - (b) omit the definition of “the Director”.

*Gas Act 1986 (c. 44)*

- 15 The Gas Act 1986 is amended as follows.
- 16 (1) Section 23B (appeals) is amended as follows.
  - (2) In subsection (1), for “Competition Commission (“the Commission”)” substitute “CMA”.
  - (3) In subsections (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) In the heading, for “Competition Commission” substitute “CMA”.
- 17 (1) Section 23C (procedure on appeal) is amended as follows.
  - (2) Omit subsection (1).
  - (3) In subsection (2), omit “Instead,”.
  - (4) After subsection (2) insert—

“(2A) Except where specified otherwise in Schedule 4A, the functions of the CMA with respect to an appeal under section 23B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
  - (5) In the heading, for “Commission” substitute “CMA”.
- 18 (1) Section 23D (determination of appeal) is amended as follows.
  - (2) In subsections (2) to (5), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In the heading, for “Commission” substitute “CMA”.

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- 19 (1) Section 23E (powers on allowing appeal) is amended as follows.
- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsection (2)—
- (a) for “Commission” (in each place where it occurs) substitute “CMA”, and
- (b) for “Commission’s” substitute “CMA’s”.
- (4) In subsection (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (7), for “Commission’s” substitute “CMA’s”.
- (6) In the heading, for “Commission’s” substitute “CMA’s”.
- 20 (1) Section 23F (time limits for determination of appeal) is amended as follows.
- (2) In subsections (1), (3) to (5) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission” substitute “CMA”.
- 21 (1) Section 23G (supplementary provision about determination of appeal) is amended as follows.
- (2) In subsection (1), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (2)—
- (a) for “Commission” substitute “CMA”, and
- (b) for “Commission’s” (in each place where it occurs) substitute “CMA’s”.
- (4) In subsection (3), for “Commission” substitute “CMA”.
- (5) In the heading, for “Commission” substitute “CMA”.
- 22 In section 27 (modification by order under other enactments), in subsection (1), for “Office of Fair Trading, the Competition Commission” substitute “CMA”.
- 23 (1) Section 41D (application by Authority for order including new activities) is amended as follows.
- (2) In subsection (3), for the words from “shall” to the end, substitute “shall, before making the application, make a reference under section 41E to the CMA”.
- (3) In subsections (4) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) After subsection (6), insert—
- “(7) The functions of the CMA with respect to a reference under section 41E (including functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 41EB) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
- 24 (1) Section 41E (references) is amended as follows.
- (2) In subsection (1)—
- (a) for “Competition Commission” substitute “CMA”, and

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- (b) for “the Commission” substitute “the CMA”.
- (3) In subsections (2), (3), (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Competition Commission” substitute “CMA”.
- 25 In section 41EA (references under section 41E: time limits), in subsections (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 26 In section 41EB (references under section 41E: application of the Enterprise Act 2002), in subsection (4)—
  - (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “the words” to the end, substitute “—
    - (a) the words “, OFCOM or the Secretary of State” were omitted; and
    - (b) for the words “their functions” there were substituted “its functions”.”
- 27 (1) Section 41F (reports on references) is amended as follows.
  - (2) In subsection (1), for “Competition Commission” substitute “CMA”.
  - (3) In subsections (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) In subsection (3A)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for the words from “in connection with” to the end, substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
  - (5) In subsections (3B) to (4C), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
  - (6) In subsection (5), for “Commission” substitute “CMA”.
- 28 In section 48 (interpretation of Part 1), in subsection (1), after the definition of “calorific value” insert—

““the CMA” means the Competition and Markets Authority;”.
- 29 (1) Schedule 4A (procedure for appeals under section 23B) is amended as follows.
  - (2) In paragraph 1—
    - (a) in sub-paragraphs (1) and (7), for “Commission” (in each place where it occurs) substitute “CMA”,
    - (b) in sub-paragraph (8)—
      - (i) for “Commission’s” substitute “CMA’s”, and
      - (ii) for “Commission” substitute “CMA”,
    - (c) in sub-paragraph (9)—
      - (i) for “deciding” substitute “the authorised member decides”, and
      - (ii) for “the Commission must give the Authority” substitute “the Authority must be given”,
    - (d) in sub-paragraph (10), for “Commission’s” substitute “CMA’s”,

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- (e) in sub-paragraph (12), for “the Commission must” substitute “an authorised member of the CMA must”, and
  - (f) in sub-paragraph (13)—
    - (i) for “of the Commission” substitute “of the CMA”, and
    - (ii) for “as the Commission” substitute “as an authorised member of the CMA”.
- (3) In paragraph 2—
- (a) in sub-paragraph (1), for “Commission” substitute “CMA”,
  - (b) in sub-paragraph (2)(b), for “the Commission has given the Authority” substitute “the Authority has been given”,
  - (c) in sub-paragraph (3), for “Commission’s” substitute “CMA’s”,
  - (d) in sub-paragraph (4), for “Commission” substitute “CMA”,
  - (e) in sub-paragraph (5)—
    - (i) for “Commission’s” substitute “CMA’s”, and
    - (ii) for “Commission” substitute “CMA”, and
  - (f) in sub-paragraph (6)—
    - (i) in paragraph (a), for “Commission” substitute “CMA”, and
    - (ii) in paragraph (b), for “the Commission” substitute “an authorised member of the CMA”.
- (4) In paragraph 3, in sub-paragraphs (1) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In paragraph 4—
- (a) omit sub-paragraph (1),
  - (b) in sub-paragraph (2)—
    - (i) after “group” insert “constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 23B”, and
    - (ii) for “Commission” substitute “CMA panel”,
  - (c) omit sub-paragraphs (3) to (7), and
  - (d) in sub-paragraph (8), for “a group” substitute “the group”.
- (6) In paragraph 5, in sub-paragraph (1)—
- (a) for “The group with the function of determining an appeal” substitute “The CMA”, and
  - (b) for “determination of the appeal” substitute “determination of an appeal”.
- (7) In paragraph 6—
- (a) in sub-paragraph (1), for “Commission” (in each place where it occurs) substitute “CMA”,
  - (b) in sub-paragraph (4)—
    - (i) for “The Commission may take copies” substitute “An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken”, and
    - (ii) omit “to it”, and



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- (c) in sub-paragraph (5), in paragraph (a), for the words from “Commission’s” to the end of paragraph (a), substitute “CMA’s behalf by an authorised member of the CMA”.
- (8) In paragraph 7—
- (a) in sub-paragraph (2), for “Commission” substitute “CMA”,
  - (b) in sub-paragraph (5)(a), for “the Commission is not required” substitute “there is no requirement”,
  - (c) in sub-paragraph (7), for “the Commission must pay that person” substitute “an authorised member of the CMA must arrange for that person to be paid”, and
  - (d) in sub-paragraph (8), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”.
- (9) In paragraph 8—
- (a) in sub-paragraph (1), for “Commission” substitute “CMA”, and
  - (b) in sub-paragraph (4), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”.
- (10) In paragraph 9, for “Commission” substitute “CMA”.
- (11) In paragraph 10, in sub-paragraph (1), for “a member of the Commission” substitute “an authorised member of the CMA”.
- (12) In paragraph 11, in sub-paragraphs (1), (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA Board”.
- (13) In paragraph 12, in sub-paragraphs (1) and (2), for “Commission” (in each place where it occurs) substitute “CMA”.
- (14) In paragraph 13, in sub-paragraph (1)—
- (a) for the definition of “authorised member of the Commission” substitute—
    - ““authorised member of the CMA”—
    - (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;
    - (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—
      - (i) any member of the CMA Board who is also a member of the CMA panel, or
      - (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question.”,
  - (b) omit the definition of “the Chairman”,
  - (c) for the definition of “the Commission” substitute—
    - ““CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;”, and
  - (d) omit the definition of a “group”.

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*Electricity Act 1989 (c. 29)*

- 30 The Electricity Act 1989 is amended as follows.
- 31 (1) Section 11C (appeals) is amended as follows.
- (2) In subsection (1), for “Competition Commission (“the Commission”)” substitute “CMA”.
- (3) In subsections (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Competition Commission” substitute “CMA”.
- 32 (1) Section 11D (procedure on appeal) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (2), omit “Instead.”
- (4) After subsection (2) insert—
- “(2A) Except where specified otherwise in Schedule 5A, the functions of the CMA with respect to an appeal under section 11C are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
- (5) In the heading, for “Commission” substitute “CMA”.
- 33 (1) Section 11E (determination of appeal) is amended as follows.
- (2) In subsections (2) to (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission” substitute “CMA”.
- 34 (1) Section 11F (powers on allowing appeal) is amended as follows.
- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsection (2)—
- (a) for “Commission” (in each place where it occurs) substitute “CMA”, and
- (b) for “Commission’s” substitute “CMA’s”.
- (4) In subsection (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (7), for “Commission’s” substitute “CMA’s”.
- (6) In the heading, for “Commission’s” substitute “CMA’s”.
- 35 (1) Section 11G (time limits for determination of appeal) is amended as follows.
- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsections (3) to (5) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Commission” substitute “CMA”.
- 36 (1) Section 11H (supplementary provision about determination of appeal) is amended as follows.

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- (2) In subsection (1), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (2)—
- (a) for “Commission” substitute “CMA”, and
  - (b) for “Commission’s” (in each place where it occurs) substitute “CMA’s”.
- (4) In subsection (3), for “Commission” substitute “CMA”.
- (5) In the heading, for “Commission” substitute “CMA”.
- 37 In section 15 (modification by order under other enactments), in subsection (1) for “Office of Fair Trading, the Competition Commission” substitute “CMA”.
- 38 (1) Section 56B (application for order including new activities) is amended as follows.
- (2) In subsection (3), for the words from “shall” to the end, substitute “shall, before making the application, make a reference under section 56C to the CMA”.
- (3) In subsections (4) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) After subsection (6), insert—
- “(7) The functions of the CMA with respect to a reference under section 56C (including functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 56CB) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
- 39 (1) Section 56C (references) is amended as follows.
- (2) In subsection (1)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (3) In subsections (2), (3), (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Competition Commission” substitute “CMA”.
- 40 In section 56CA (references under section 56C: time limits), in subsections (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 41 In section 56CB (references under section 56C: application of Enterprise Act 2002), in subsection (4)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “the words” to the end, substitute “—
    - (a) the words “, OFCOM or the Secretary of State” were omitted; and
    - (b) for the words “their functions” there were substituted “its functions”.”
- 42 (1) Section 56D (reports on references) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.

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- (3) In subsections (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In subsection (3A)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “in connection with” to the end, substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- (5) In subsections (3B) to (4C), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (6) In subsection (5), for “Commission” substitute “CMA”.
- 43 In section 64 (interpretation etc of Part 1), in subsection (1), after the definition of “authorised supplier” insert—
- “the CMA” means the Competition and Markets Authority;”.
- 44 (1) Schedule 5A (procedure for appeals under section 11C) is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraphs (1) and (7), for “Commission” (in each place where it occurs) substitute “CMA”,
  - (b) in sub-paragraph (8)—
    - (i) for “Commission’s” substitute “CMA’s”, and
    - (ii) for “Commission” substitute “CMA”,
  - (c) in sub-paragraph (9)—
    - (i) for “deciding” substitute “the authorised member decides”, and
    - (ii) for “the Commission must give the Authority” substitute “the Authority must be given”,
  - (d) in sub-paragraph (10), for “Commission’s” substitute “CMA’s”,
  - (e) in sub-paragraph (12), for “the Commission must” substitute “an authorised member of the CMA must”, and
  - (f) in sub-paragraph (13)—
    - (i) for “of the Commission” substitute “of the CMA”, and
    - (ii) for “as the Commission” substitute “as an authorised member of the CMA”.
- (3) In paragraph 2—
- (a) in sub-paragraph (1) for “Commission” substitute “CMA”,
  - (b) in sub-paragraph (2)(b), for “the Commission has given the Authority” substitute “the Authority has been given”,
  - (c) in sub-paragraph (3), for “Commission’s” substitute “CMA’s”,
  - (d) in sub-paragraph (4), for “Commission” substitute “CMA”,
  - (e) in sub-paragraph (5)—
    - (i) for “Commission’s” substitute “CMA’s”, and
    - (ii) for “Commission” substitute “CMA”, and
  - (f) in sub-paragraph (6)—
    - (i) in paragraph (a), for “Commission” substitute “CMA”, and
    - (ii) in paragraph (b), for “the Commission” substitute “an authorised member of the CMA”.

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- (4) In paragraph 3, in sub-paragraphs (1) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In paragraph 4—
  - (a) omit sub-paragraph (1),
  - (b) in sub-paragraph (2)—
    - (i) after “group” insert “constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 11C”, and
    - (ii) for “Commission” substitute “CMA panel”,
  - (c) omit sub-paragraphs (3) to (7), and
  - (d) in sub-paragraph (8), for “a group” substitute “the group”.
- (6) In paragraph 5, in sub-paragraph (1)—
  - (a) for “The group with the function of determining an appeal” substitute “The CMA”, and
  - (b) for “determination of the appeal” substitute “determination of an appeal”.
- (7) In paragraph 6—
  - (a) in sub-paragraph (1), for “Commission” (in each place where it occurs) substitute “CMA”,
  - (b) in sub-paragraph (4)—
    - (i) for “The Commission may take copies” substitute “An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken”, and
    - (ii) omit “to it”, and
  - (c) in sub-paragraph (5), in paragraph (a), for the words from “Commission’s” to the end of paragraph (a), substitute “CMA’s behalf by an authorised member of the CMA”.
- (8) In paragraph 7—
  - (a) in sub-paragraph (2), for “Commission” substitute “CMA”,
  - (b) in sub-paragraph (5)(a), for “the Commission is not required” substitute “there is no requirement”,
  - (c) in sub-paragraph (7), for “the Commission must pay that person” substitute “an authorised member of the CMA must arrange for that person to be paid”, and
  - (d) in sub-paragraph (8), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”.
- (9) In paragraph 8—
  - (a) in sub-paragraph (1), for “Commission” substitute “CMA”, and
  - (b) in sub-paragraph (4), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”.
- (10) In paragraph 9, for “Commission” substitute “CMA”.
- (11) In paragraph 10, in sub-paragraph (1), for “a member of the Commission” substitute “an authorised member of the CMA”.

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- (12) In paragraph 11, in sub-paragraphs (1), (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA Board”.
- (13) In paragraph 12, in sub-paragraphs (1) and (2), for “Commission” (in each place where it occurs) substitute “CMA”.
- (14) In paragraph 13, in sub-paragraph (1)—
- (a) for the definition of “authorised member of the Commission” substitute—
    - “authorised member of the CMA”—
    - (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;
    - (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—
      - (i) any member of the CMA Board who is also a member of the CMA panel, or
      - (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question.”
  - (b) omit the definition of “the Chairman”,
  - (c) for the definition of “the Commission” substitute—
    - “CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;”, and
  - (d) omit the definition of a “group”.

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)*

- 45 The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 is amended as follows.
- 46 In section 26 (consideration of applications made under section 25), in subsection (3), for “Director” substitute “CMA”.
- 47 In section 31 (rules of conduct), in subsection (2), for “Director” (in each place where it occurs) substitute “CMA”.
- 48 (1) Section 40 (advisory and supervisory functions of Director) is amended as follows.
- (2) In subsections (1) and (2), for “Director” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (3)—
    - (a) for “Director has completed his consideration he” substitute “CMA has completed its consideration it”, and
    - (b) for “as he” substitute “as it”.
  - (4) In subsection (4), for “The Director may publish any advice given by him” substitute “The CMA may publish any advice given”.
  - (5) In subsection (5)—

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- (a) for “Director” substitute “CMA”, and
  - (b) for “Director’s” substitute “CMA’s”.
- (6) In the heading, for “Director” substitute “CMA”.
- 49 (1) Section 41 (investigatory powers of Director) is amended as follows.
- (2) In subsection (1)—
    - (a) for “Director” substitute “CMA”, and
    - (b) in paragraphs (a) and (b), for “him” in each place substitute “the CMA”.
  - (3) In the heading, for “Director” substitute “CMA”.
- 50 In section 41A (enforcement of notices under section 41), in subsections (1) and (2), for “Office of Fair Trading” (in each place where it occurs) substitute “CMA”.
- 51 In section 44 (interpretation of Part 2)—
  - (a) after the definition of “advocate” insert—
    - ““the CMA” means the Competition and Markets Authority;”, and
  - (b) omit the definition of “the OFT”.

*Water Industry Act 1991 (c. 56)*

- 52 The Water Industry Act 1991 is amended as follows.
- 53 (1) Section 12 (determinations under conditions of appointment) is amended as follows.
- (2) In subsection (2)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (3) In subsection (3)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “that Commission” (in each place where it occurs) substitute “the CMA”.
  - (4) In subsection (3A), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (5) In subsections (3B) and (3C), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
  - (6) After subsection (3C) insert—
    - “(3D) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by subsection (3B) read with section 16B).”
- 54 (1) Section 14 (modification references) is amended as follows.
- (2) In subsection (1)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.

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- (3) In subsection (2)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (4) In subsection (3), for “Competition Commission” substitute “CMA”.
- (5) In subsection (5)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
- (6) In subsection (6), for “Competition Commission” substitute “CMA”.
- (7) After subsection (6) insert—
- “(6A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 14B and 16B).”
- (8) In the heading, for “Monopolies Commission” substitute “CMA”.
- 55 In section 14A (references under section 14: time limits), in subsections (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 56 (1) Section 15 (reports on modification references) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
  - (3) In subsection (1A)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for the words from “in connection with the reference” to the end, substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.  - (4) In subsections (1B), (3) to (3C) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 57 In section 16 (modification following report), in subsections (1) and (4A), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 58 (1) Section 16A (power of veto following report) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “the Commission”)” substitute “The CMA”.
  - (3) In subsections (2) to (9), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) Omit subsection (10).
  - (5) In the heading, for “Commission’s” substitute “CMA’s”.
- 59 (1) Section 16B (power of veto following report: supplementary) is amended as follows.
- (2) In subsections (2) to (4), (6) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.



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- (3) In the heading, for “Commission’s” substitute “CMA’s”.
- 60 In section 17 (modification by order under other enactments), in subsection (1), for “OFT, the Competition Commission” substitute “CMA”.
- 61 (1) Section 17K (water supply licences: modification references) is amended as follows.
- (2) In subsection (1)—
- (a) for the words from “Competition Commission” to “the Commission”)” substitute “CMA”, and
- (b) for “Commission to” substitute “CMA to”.
- (3) In subsections (2) to (4), (6), (7) and (9), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) After subsection (9) insert—
- “(10) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 17M and 17Q).”
- (5) In the heading, for “Competition Commission” substitute “CMA”.
- 62 In section 17L (references under section 17K: time limits), in subsections (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- 63 (1) Section 17N (water supply licences: reports on modification references) is amended as follows.
- (2) In subsection (1), for “Commission” substitute “CMA”.
- (3) In subsection (2)—
- (a) for “Commission” substitute “CMA”, and
- (b) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- (4) In subsections (3) to (7) and (9), for “Commission” (in each place where it occurs) substitute “CMA”.
- 64 In section 17O (water supply licences: modification following report), in subsections (1) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- 65 (1) Section 17P (water supply licences: power of veto following report) is amended as follows.
- (2) In subsections (1) to (8) and (10) and (11), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission’s” substitute “CMA’s”.
- 66 (1) Section 17Q (section 17P: supplementary) is amended as follows.
- (2) In subsections (2) to (4), (6) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.

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- 67 In section 17R (water supply licences: modification by order under other enactments), in subsection (1), for “OFT, the Commission” substitute “CMA”.
- 68 In section 219 (general interpretation), in subsection (1)—
- (a) after the definition of “the Authority” insert—  
“the CMA” means the Competition and Markets Authority”, and
  - (b) omit the definition of “the OFT”.

*Railways Act 1993 (c. 43)*

- 69 The Railways Act 1993 is amended as follows.
- 70 (1) Section 13 (modification references) is amended as follows.
- (2) In subsection (1)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (3) In subsection (2)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (4) In subsection (3), for “Competition Commission” substitute “CMA”.
  - (5) In subsection (5)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (6) In subsection (6)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
  - (7) In subsection (7), for “Competition Commission” substitute “CMA”.
  - (8) After subsection (9) insert—
 

“(10) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 13B and 15C).”
  - (9) In the heading, for “Monopolies Commission” substitute “CMA”.
- 71 In section 13A (references under section 13: time limits), in subsections (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 72 (1) In section 13B (application of Enterprise Act 2002), in subsection (4)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “the words” to the end, substitute “—
    - (a) the words “, OFCOM or the Secretary of State” were omitted; and
    - (b) for the words “their functions” there were substituted “its functions”.”

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- 73 (1) Section 14 (reports on modification references) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
- (3) In subsection (1A)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- (4) In subsections (1B), (3) to (3C) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 74 In section 15 (modification following report), in subsections (1), (4A), (4C) and (4D), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 75 (1) Section 15A (power to veto modifications following report) is amended as follows.
- (2) In subsections (1) to (5), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Competition Commission’s” substitute “CMA’s”.
- 76 (1) Section 15B (making of modifications) is amended as follows.
- (2) In subsections (1) to (5), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Competition Commission” substitute “CMA”.
- 77 (1) Section 15C (sections 15A and 15B: supplementary) is amended as follows.
- (2) In subsections (2) to (2B) and (2D), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (2F), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In subsection (2G)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “the words” to the end, substitute “—
    - (a) the words “, OFCOM or the Secretary of State” were omitted; and
    - (b) for the words “their functions” there were substituted “its functions”.”
- (5) In subsections (3) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 78 In section 16 (modification by order under other enactments), in subsection (1), for “OFT, the Competition Commission” substitute “CMA”.
- 79 (1) Section 74 (annual and other reports) is amended as follows.
- (2) In subsection (1)(b), for “Competition Commission’s” substitute “CMA’s”.
- (3) Omit subsection (7).
- 80 In section 83 (interpretation of Part 1), in subsection (1)—

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- (a) before the definition of “cross-border service” insert—
    - ““the CMA” means the Competition and Markets Authority;”, and
  - (b) omit the definition of “the OFT”.
- 81 (1) Schedule 4A (review of access charges by regulators) is amended as follows.
- (2) In the italic cross-heading preceding paragraph 8, for “Competition Commission reference” substitute “reference to CMA”.
  - (3) In paragraph 8, in sub-paragraph (2)(b), for “Competition Commission” substitute “CMA”.
  - (4) In the italic cross-heading preceding paragraph 9, for “Competition Commission” substitute “CMA”.
  - (5) In paragraph 9—
    - (a) in sub-paragraphs (1), (3) to (5), and (6A) to (9), for “Competition Commission” (in each place where it occurs) substitute “CMA”, and
    - (b) after sub-paragraph (9), insert—
      - “(10) The functions of the CMA with respect to a reference under this paragraph are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of changes following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by paragraphs 10A and 15).”
  - (6) In paragraph 10A, in sub-paragraph (4)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for the words from “the words” to the end, substitute “—
      - (a) the words “, OFCOM or the Secretary of State” were omitted; and
      - (b) for the words “their functions” there were substituted “its functions”.
  - (7) In paragraph 11—
    - (a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”,
    - (b) in sub-paragraph (4A)—
      - (i) for “Competition Commission” substitute “CMA”, and
      - (ii) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”, and
    - (c) in sub-paragraphs (4B) to (5C) and (6), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
  - (8) In paragraph 12, in sub-paragraphs (1), (4B), (5), (8) and (9), for “Competition Commission” substitute “CMA”.
  - (9) In the italic cross-heading preceding paragraph 13, for “Competition Commission’s” substitute “CMA’s”.
  - (10) In paragraph 13, in sub-paragraphs (1) to (5), for “Competition Commission” (in each place where it occurs) substitute “CMA”.

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- (11) In the italic cross-heading preceding paragraph 14, for “Competition Commission” substitute “CMA”.
- (12) In paragraph 14, in sub-paragraphs (1) to (3) and (5) and (6), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (13) In paragraph 15—
- (a) in sub-paragraphs (2) to (2B) and (2D), for “Competition Commission” (in each place where it occurs) substitute “CMA”,
  - (b) in sub-paragraph (2F), for “Commission” (in each place where it occurs) substitute “CMA”,
  - (c) in sub-paragraph (2G)—
    - (i) for “Competition Commission” substitute “CMA”, and
    - (ii) for the words from “the words” to the end, substitute “—
      - (a) the words “, OFCOM or the Secretary of State” were omitted; and
      - (b) for the words “their functions” there were substituted “its functions”.”, and
  - (d) in sub-paragraphs (3) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.

*Utilities Act 2000 (c. 27)*

82 The Utilities Act 2000 is amended as follows.

- 83 (1) Section 5 (annual and other reports of Authority) is amended as follows.
- (2) In subsection (1)(b), for “Competition Commission” substitute “Competition and Markets Authority”.
  - (3) Omit subsection (9).

84 Section 104 (specialist members of the Competition Commission) is omitted.

*Transport Act 2000 (c. 38)*

85 The Transport Act 2000 is amended as follows.

- 86 (1) Section 12 (references) is amended as follows.
- (2) In subsection (1)—
    - (a) for “Competition Commission” substitute “Competition and Markets Authority (referred to in this Chapter as “the CMA”)", and
    - (b) for “the Commission” substitute “the CMA”.
  - (3) In subsections (2), (3) and (5) to (8), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) After subsection (8) insert—
    - “(8A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of

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- modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 12B and 18).”
- (5) In the heading, for “Competition Commission” substitute “Competition and Markets Authority”.
- 87 In section 12A (references under section 12: time limits), in subsections (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 88 In section 12B (references under section 12: application of Enterprise Act 2002), in subsection (4)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “the words” to the end, substitute “—
    - (a) the words “, OFCOM or the Secretary of State” were omitted; and
    - (b) for the words “their functions” there were substituted “its functions”.”
- 89 (1) Section 13 (reports on references) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
- (3) In subsection (1A)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “in connection with” to the end, substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference.”.
- (4) In subsections (1B) to (2C), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (5) In subsection (3), for “Commission” substitute “CMA”.
- 90 (1) Section 14 (modification following report) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
- (3) In subsection (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- 91 (1) Section 15 (power to give direction) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
- (3) In subsection (2), for “Commission” substitute “CMA”.
- (4) In subsection (3)—
- (a) for “Commission” substitute “CMA”, and
  - (b) for “Commission’s” substitute “CMA’s”.
- (5) In subsections (4), (9) and (10), for “Commission” (in each place where it occurs) substitute “CMA”.
- (6) In the heading, for “Commission’s” substitute “CMA’s”.
- 92 (1) Section 16 (position where direction given) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.

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- (3) In subsection (2)—
    - (a) for “Commission” substitute “CMA”, and
    - (b) for “Commission’s” substitute “CMA’s”.
  - (4) In subsection (3)—
    - (a) for “Commission” substitute “CMA”, and
    - (b) for “Commission’s” substitute “CMA’s”.
  - (5) In subsections (4) to (6), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (6) In the heading, for “Commission” substitute “CMA”.
- 93 (1) Section 17 (duty as to modifications under section 16) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
  - (3) In subsections (2) and (4) to (6), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) In the heading, for “Commission’s” substitute “CMA’s”.
- 94 (1) Section 18 (sections 15 and 16: general) is amended as follows.
- (2) In subsections (2) to (4) and (6), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (8), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) In subsection (9)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for the words from “the words” to the end, substitute “—
      - (a) the words “, OFCOM or the Secretary of State” were omitted; and
      - (b) for the words “their functions” there were substituted “its functions”.”
- 95 In section 19 (modification by order under other enactments), in subsection (1), for “Office of Fair Trading, the Competition Commission” substitute “CMA”.
- 96 (1) Schedule 10 (competition test: functions and agreements relating to buses) is amended as follows.
- (2) In the italic cross-heading preceding paragraph 5, for “OFT” substitute “CMA”.
  - (3) In paragraph 5—
    - (a) for “Office of Fair Trading” substitute “Competition and Markets Authority”, and
    - (b) for “OFT” substitute “CMA”.
  - (4) In paragraphs 6, 7, 9, 10 and 12 to 14, for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraph 14A, in sub-paragraphs (2) to (6), for “OFT” (in each place where it occurs) substitute “CMA”.

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- (6) In paragraphs 15 and 16, for “OFT” (in each place where it occurs) substitute “CMA”.

*Communications Act 2003 (c. 21)*

- 97 The Communications Act 2003 is amended as follows.
- 98 (1) Section 193 (reference of price control matters) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
- (3) In subsection (2)—
- (a) for “Competition Commission” substitute “CMA”,
  - (b) for “the Commission is to determine that matter” substitute “the determination of the matter is to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, and is to be performed”,
  - (c) in paragraph (b), for “them” substitute “the CMA”, and
  - (d) in paragraph (c), for “Commission” substitute “CMA”.
- (4) In subsection (3)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “that Commission” substitute “the CMA”.
- (5) In subsection (4), for “Competition Commission” substitute “CMA”.
- (6) In subsection (6)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “that Commission” substitute “the CMA”.
- (7) In subsections (7) and (8), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (8) In the heading, for “Competition Commission” substitute “CMA”.
- 99 Section 194 (composition of Competition Commission for price control references) is omitted.
- 100 In section 197 (interpretation of Chapter 3), before the definition of “network access” insert—
- ““the CMA” means the Competition and Markets Authority;”.

*Energy Act 2004 (c. 20)*

- 101 The Energy Act 2004 is amended as follows.
- 102 (1) Section 173 (appeals) is amended as follows.
- (2) In subsection (1)—
- (a) omit “shall lie to the Competition Commission”, and
  - (b) after “applies” insert “shall lie to the Competition and Markets Authority (in this Chapter referred to as “the CMA”)”.
- (3) In subsections (4) and (5), for “Competition Commission” (in each place where it occurs) substitute “CMA”.



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- (4) In the heading, for “Competition Commission” substitute “CMA”.
- 103 (1) Section 174 (procedure on appeals) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (2), omit “Instead.”.
- (4) After subsection (2) insert—
- “(2A) Except where specified otherwise in Schedule 22, the functions of the CMA with respect to appeals under section 173 are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
- 104 (1) Section 175 (determination of appeals) is amended as follows.
- (2) In subsections (2) to (6), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsection (9)—
- (a) for “Competition Commission” substitute “CMA”, and
- (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
- (4) In subsection (10), for “Competition Commission” substitute “CMA”.
- 105 Section 176 is omitted.
- 106 Section 177 is omitted.
- 107 (1) Schedule 22 (procedure for appeals under section 173) is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1), for “Commission” substitute “CMA”,
- (b) in sub-paragraph (8), for “Commission’s” substitute “CMA’s”,
- (c) in sub-paragraph (9)—
- (i) for “Commission’s” substitute “CMA’s”, and
- (ii) for “Commission” substitute “CMA”, and
- (d) in sub-paragraph (12), for “the Commission must” substitute “an authorised member of the CMA must”.
- (3) In paragraph 2, in sub-paragraphs (1), (2), (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In paragraph 3, in sub-paragraphs (1) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In paragraph 4, in sub-paragraph (1), for “Commission” substitute “CMA”.
- (6) In paragraph 5—
- (a) omit sub-paragraph (1),
- (b) in sub-paragraph (2)—
- (i) after “group”, insert “constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 173”, and
- (ii) for “Commission” substitute “CMA panel”,

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- (c) omit sub-paragraphs (3) to (7), and
  - (d) in sub-paragraph (8), for “a group” substitute “the group”.
- (7) In paragraph 6—
- (a) in sub-paragraph (1), for the words from the beginning to “that appeal” substitute “The CMA must determine an appeal”,
  - (b) in sub-paragraph (2)—
    - (i) for “group with the function of determining an appeal” substitute “CMA”, and
    - (ii) after “requirements” insert “in respect of an appeal”, and
  - (c) in sub-paragraph (3), for “Commission” substitute “CMA”.
- (8) In paragraph 7—
- (a) for “The group with the function of determining an appeal” substitute “The CMA”, and
  - (b) for “determination of the appeal” substitute “determination of an appeal”.
- (9) In paragraph 8—
- (a) in sub-paragraph (1), for “Commission” (in each place where it occurs) substitute “CMA”,
  - (b) in sub-paragraph (4)—
    - (i) for “The Commission may take copies” substitute “An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken”, and
    - (ii) omit “to it”, and
  - (c) in sub-paragraph (5), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”.
- (10) In paragraph 9—
- (a) in sub-paragraph (2), for “Commission” substitute “CMA”,
  - (b) in sub-paragraph (5)(a), for “the Commission is not required” substitute “there is no requirement”,
  - (c) in sub-paragraph (7), for “the Commission must pay him” substitute “an authorised member of the CMA must arrange for that person to be paid”, and
  - (d) in sub-paragraph (8), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”.
- (11) In paragraph 10—
- (a) in sub-paragraph (1), for “Commission” substitute “CMA”, and
  - (b) in sub-paragraph (4), for the words from “Commission’s” to the end, substitute “CMA’s behalf by an authorised member of the CMA”
- (12) In paragraph 11, in sub-paragraph (1), for “a member of the Commission” substitute “an authorised member of the CMA”.
- (13) In paragraph 12, in sub-paragraphs (1), (3) and (4), for “Commission” (in each place where it occurs) substitute “CMA Board”.
- (14) In paragraph 13, in sub-paragraph (1), for “Commission” (in each place where it occurs) substitute “CMA”.

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- (15) In paragraph 15, in sub-paragraph (1)—
- (a) for the definition of “authorised member of the Commission” substitute—  
““authorised member of the CMA”—
    - (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;
    - (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—
      - (i) any member of the CMA Board who is also a member of the CMA panel, or
      - (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question.”,
  - (b) omit the definition of “the Chairman”,
  - (c) for the definition of “the Commission” substitute—  
““the CMA” means the Competition and Markets Authority;”  
“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;”, and
  - (d) omit the definition of “a group”.

*Legal Services Act 2007 (c. 29)*

- 108 The Legal Services Act 2007 is amended as follows.
- 109 (1) Section 57 (reports) is amended as follows.
- (2) In subsection (1), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (2), for “OFT’s” substitute “CMA’s”.
  - (4) In subsections (3) to (6), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In the heading, for “OFT” substitute “CMA”.
- 110 (1) Section 58 (Board’s response to report) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
  - (3) In subsections (2) and (3), for “OFT’s” (in each place where it occurs) substitute “CMA’s”.
  - (4) In subsection (4), for “OFT” substitute “CMA”.
  - (5) In the heading, for “OFT” substitute “CMA”.
- 111 (1) Section 59 (referral of report by Lord Chancellor) is amended as follows.
- (2) In subsections (1) to (3), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In subsection (4), for the words from “must” to “its advice” substitute “must make a reference to the chair of the CMA for the constitution of a group under Schedule 4

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to the Enterprise and Regulatory Reform Act 2013, for the purpose of advising the Lord Chancellor”.

- (4) After subsection (4), insert—
- “(5) Where a reference is made to the chair of the CMA under this section for the constitution of a group, the functions of the CMA under section 60, in relation to the matter concerned, are to be carried out on behalf of the CMA by the group so constituted (including functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 60(9)).”
- (5) In the heading, omit “to the Competition Commission”.
- 112 (1) Section 60 (duties of the Competition Commission) is amended as follows.
- (2) In subsection (1), for the words from “seeks” to “the Commission” substitute “makes a reference under section 59, the CMA”.
- (3) In subsection (2), for “The Commission must then make its own report” substitute “The CMA must then make a report”.
- (4) In subsection (3), for “Commission” substitute “CMA”.
- (5) In subsection (4)—
- (a) for “Commission” substitute “CMA”, and
- (b) for the words from “it receives” to the end substitute “the reference in question is made to the chair of the CMA under section 59”.
- (6) In subsection (5), for “Commission’s” substitute “CMA’s”.
- (7) In subsection (6)—
- (a) for “Commission’s” substitute “CMA’s, and
- (b) for “Commission” (in each place where it occurs) substitute “CMA”.
- (8) In subsection (7), for “Commission” substitute “CMA”.
- (9) In subsection (8)—
- (a) for “Commission’s” substitute “CMA’s, and
- (b) for “Commission” substitute “CMA”.
- (10) In subsection (9)—
- (a) in the words before paragraph (a), for “to the Commission” substitute “to the CMA”, and
- (b) in paragraph (b), for “Commission” substitute “CMA”.
- (11) In subsection (10)—
- (a) for “Commission” substitute “CMA”, and
- (b) for “OFT’s report” substitute “report made by the CMA under section 57”.
- (12) In the heading, for “Competition Commission” substitute “CMA”.
- 113 (1) Section 61 (Lord Chancellor’s power to give directions) is amended as follows.
- (2) In subsection (1), for “OFT” substitute “CMA”.
- (3) In subsection (2), for “Competition Commission” substitute “CMA”.

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- 114 In section 66 (Board’s power to recommend orders), in subsection (3)(b), for “OFT” substitute “CMA”.
- 115 In section 67 (effect of Board’s designation as approved regulator), in subsection (3), for “OFT” substitute “CMA”.
- 116 In section 207 (interpretation), in subsection (1)—
- (a) after the definition of “barrister” insert—  
“the CMA” means the Competition and Markets Authority;”, and
  - (b) omit the definition of “the OFT”.
- 117 (1) Schedule 4 (approved regulators) is amended as follows.
- (2) In paragraph 5, in sub-paragraph (2)(a), for “OFT” substitute “CMA”.
  - (3) In the italic cross-heading preceding paragraph 6, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
  - (4) In paragraph 6, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraph 15, in sub-paragraph (5)(a), for “OFT” substitute “CMA”.
- 118 (1) Schedule 6 (alteration of reserved legal activities) is amended as follows.
- (2) In paragraph 3, in sub-paragraph (1)(b), for “OFT” substitute “CMA”.
  - (3) In paragraph 5, in sub-paragraphs (1) to (4), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (4) In paragraph 8, in sub-paragraph (3), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraph 9, in sub-paragraph (2)(b), for “OFT” substitute “CMA”.
  - (6) In paragraph 11, in sub-paragraph (4)(a), for “OFT” substitute “CMA”.
  - (7) In paragraph 17, in sub-paragraph (4)(a), for “OFT” substitute “CMA”.
- 119 (1) Schedule 7 (directions: procedure) is amended as follows.
- (2) In paragraph 3, in sub-paragraph (2)(b), for “OFT” substitute “CMA”.
  - (3) In the italic cross-heading preceding paragraph 5, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
  - (4) In paragraph 5, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 120 (1) Schedule 8 (intervention directions: procedure) is amended as follows.
- (2) In paragraph 3, in sub-paragraph (2)(b), for “OFT” substitute “CMA”.
  - (3) In the italic cross-heading preceding paragraph 5, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
  - (4) In paragraph 5, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraph 14, in sub-paragraph (3)(b), for “OFT” substitute “CMA”.

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- (6) In the italic cross-heading preceding paragraph 16, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
- (7) In paragraph 16, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 121 (1) Schedule 9 (cancellation of designation as approved regulator) is amended as follows.
  - (2) In paragraph 3, in sub-paragraph (2)(a), for “OFT” substitute “CMA”.
  - (3) In the italic cross-heading preceding paragraph 4, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
  - (4) In paragraph 4, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 122 (1) Schedule 10 (designation of approved regulators as licensing authorities) is amended as follows.
  - (2) In paragraph 3, in sub-paragraph (2)(a), for “OFT” substitute “CMA”.
  - (3) In the italic cross-heading preceding paragraph 4, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
  - (4) In paragraph 4, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraph 13, in sub-paragraph (5)(a), for “OFT” substitute “CMA”.
  - (6) In paragraph 19, in sub-paragraph (2)(a), for “OFT” substitute “CMA”.
  - (7) In the italic cross-heading preceding paragraph 20, for “Office of Fair Trading” substitute “Competition and Markets Authority”.
  - (8) In paragraph 20, in sub-paragraphs (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 123 In Schedule 24 (index of defined expressions)—
  - (a) at the appropriate place insert—
 

“CMA	section 207”, and
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  - (b) omit the reference to the OFT.

*Postal Services Act 2011 (c. 5)*

- 124 The Postal Services Act 2011 is amended as follows.
- 125 (1) Section 59 (price control decisions) is amended as follows.
  - (2) In subsection (3), for “Competition Commission (“the Commission”)” substitute “Competition and Markets Authority (“the CMA”)”.
  - (3) In subsections (5) to (12), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) After subsection (12) insert—

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“(12A) The CMA’s functions with respect to an appeal under this section are to be carried out on its behalf by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013”.

- 126 In section 60 (section 59: supplementary), in subsections (1) and (4) to (6), for “Commission” (in each place where it occurs) substitute “CMA”.

*Health and Social Care Act 2012 (c. 7)*

- 127 The Health and Social Care Act 2012 is amended as follows.

- 128 (1) Section 101 (licence condition modification references) is amended as follows.

(2) In subsection (2)—

- (a) for “Competition Commission” substitute “CMA”, and
- (b) for “the Commission” substitute “the CMA”.

(3) In subsection (4)—

- (a) for “Competition Commission” substitute “CMA”, and
- (b) for “the Commission” substitute “the CMA”.

(4) After subsection (4) insert—

“(4A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of changes following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by paragraph 10 of Schedule 10).”

(5) In subsections (5) and (6), for “Competition Commission” (in each place where it occurs) substitute “CMA”.

(6) In the heading, for “Competition Commission” substitute “CMA”.

- 129 In section 102 (modification of conditions by order under other enactments), in subsection (1), for “Office of Fair Trading, Competition Commission” substitute “CMA”.

- 130 In section 103 (standard condition as to transparency of certain criteria), in subsection (3)—

- (a) in paragraph (b), for “Competition Commission” substitute “CMA”, and
- (b) in paragraph (c), for “Office of Fair Trading, Competition Commission” substitute “CMA”.

- 131 (1) Section 120 (responses to consultation on proposals for national tariff) is amended as follows.

(2) In subsections (1) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.

(3) In subsection (5), omit the words from the beginning to “instead”.

(4) After subsection (5), insert—

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- “(5A) Except where specified otherwise in Schedule 12, the functions of the CMA with respect to a reference under this section (including functions relating to the making of changes following a determination on a reference) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”
- 132 (1) Section 121 (determination on reference under section 120) is amended as follows.
- (2) In subsections (1) to (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (3) In subsections (4) to (6) and (8) to (10), for “Commission” (in each place where it occurs) substitute “CMA”.
- 133 In section 122 (changes following determination on reference under section 120), in subsections (1) and (2), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 134 (1) Section 123 (power to veto changes proposed under section 122) is amended as follows.
- (2) In subsection (1), for “Competition Commission” substitute “CMA”.
- (3) In subsection (3), for “Commission” substitute “CMA”.
- (4) In subsection (4), for “Competition Commission” substitute “CMA”.
- (5) In subsections (5) to (7), for “Commission” (in each place where it occurs) substitute “CMA”.
- 135 (1) Section 142 (responses to consultation on proposal to impose a levy) is amended as follows.
- (2) In subsections (1) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (3) After subsection (4) insert—
- “(4A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of changes following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by paragraph 10 of Schedule 10).”
- (4) In subsections (5) and (7), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 136 (1) Section 149 (electronic communications) is amended as follows.
- (2) In subsection (2)—
- (a) for “Competition Commission” substitute “CMA”, and
- (b) for “the Commission” substitute “the CMA”.
- (3) In subsections (3) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.



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- 137 In section 150 (interpretation etc. of Part 3), in subsection (1), after the definition of “anti-competitive behaviour” insert—  
““the CMA” means the Competition and Markets Authority;”.
- 138 (1) Schedule 10 (references by Monitor under section 101 or 142) is amended as follows.
- (2) In the heading, for “Competition Commission” substitute “CMA”.
- (3) In paragraph 1—  
(a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”, and  
(b) in sub-paragraph (2), for “the Commission” substitute “the CMA”.
- (4) In paragraph 2, for “Competition Commission” substitute “CMA”.
- (5) In paragraph 4—  
(a) in sub-paragraph (1)—  
(i) for “Competition Commission” substitute “CMA”, and  
(ii) for “the Commission” (in each place where it occurs) substitute “the CMA”, and  
(b) in sub-paragraph (2), for “Commission” substitute “CMA”.
- (6) In paragraph 5—  
(a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”,  
(b) in sub-paragraph (3), for “Commission” substitute “CMA”, and  
(c) in sub-paragraph (4), for “Competition Commission” substitute “CMA”.
- (7) In paragraph 6—  
(a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”,  
(b) in sub-paragraph (2)—  
(i) for “Commission” substitute “CMA”, and  
(ii) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”, and  
(c) in sub-paragraph (4), for “Commission” substitute “CMA”.
- (8) In paragraph 7, in sub-paragraphs (1) and (8), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (9) In the italic cross-heading preceding paragraph 8, for “Competition Commission’s” substitute “CMA’s”.
- (10) In paragraph 8—  
(a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”, and  
(b) in sub-paragraphs (3) to (5), (7), (8) and (10) to (12), for “Commission” (in each place where it occurs) substitute “CMA”.
- (11) In paragraph 9—  
(a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”, and  
(b) in sub-paragraphs (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (12) In paragraph 10, in sub-paragraph (2), for “Competition Commission” substitute “CMA”.

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- 139 (1) Schedule 12 (procedure on references under section 120) is amended as follows.
- (2) In paragraph 2, in sub-paragraph (1), for “Competition Commission” substitute “CMA”.
- (3) In the italic cross-heading preceding paragraph 3, for “Commission” substitute “CMA”.
- (4) In paragraph 3—
- (a) omit sub-paragraph (1),
  - (b) in sub-paragraph (2)—
    - (i) for “selected under this paragraph” substitute “constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to a reference under section 120”, and
    - (ii) for “Commission” substitute “CMA panel”,
  - (c) omit sub-paragraphs (3) to (6), and
  - (d) in sub-paragraph (7), for “a group” substitute “the group”.
- (5) In paragraph 4—
- (a) in sub-paragraph (1), for the words from the beginning to “the determination” substitute “The CMA must make its determination on a reference”,
  - (b) in sub-paragraph (2), for “that group” substitute “the CMA”, and
  - (c) in sub-paragraph (3), for “Competition Commission” substitute “CMA”.
- (6) In paragraph 5, in sub-paragraph (1)—
- (a) for “group with the function of determining a reference” substitute “CMA”, and
  - (b) for “of the appeal” substitute “on a reference”.
- (7) In paragraph 6, in sub-paragraphs (1) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- (8) In paragraph 7—
- (a) in sub-paragraph (1), for “a group with the function of making a determination on a reference under section 120” substitute “the CMA”,
  - (b) in sub-paragraph (2), for “A group with that function” substitute “The CMA”,
  - (c) in sub-paragraph (3), for “Competition Commission” substitute “CMA”,
  - (d) in sub-paragraph (4)—
    - (i) for “Competition Commission” substitute “CMA”, and
    - (ii) in paragraph (b), after “evidence” insert “to it” and omit “to a group with that function”,
  - (e) in sub-paragraph (5), for “group conducting the hearing” substitute “CMA”,
  - (f) in sub-paragraph (8)—
    - (i) in paragraph (a), for “Competition Commission” substitute “CMA”, and
    - (ii) in paragraph (b), for “group conducting the hearing” substitute “CMA”, and
  - (g) in sub-paragraph (9), for “Competition Commission” substitute “CMA”.

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- (9) In paragraph 8, in sub-paragraph (1)—
  - (a) for “Commission” substitute “CMA”, and
  - (b) for “a group with the function of making a determination on a reference under section 120” substitute “the CMA”.
- (10) In paragraph 9, in sub-paragraph (2), for “Commission” substitute “group constituted for the purpose of carrying out functions of the CMA with respect to the reference to which the notice or requirement relates”.
- (11) In paragraph 10, in sub-paragraph (2) for the words from “Competition Commission’s” to the end substitute “CMA’s behalf by a member of the group constituted for the purpose of carrying out functions of the CMA with respect to the reference to which the notice relates”.
- (12) In paragraph 11—
  - (a) in sub-paragraph (1), for “Competition Commission” substitute “CMA Board”, and
  - (b) in sub-paragraphs (4) and (5), for “Commission” substitute “CMA Board”.
- (13) In paragraph 12—
  - (a) for sub-paragraph (1) substitute—
    - “(1) Where the CMA makes a determination on a reference under section 120 it must make an order requiring the payment to it of the costs it incurred in connection with the reference.”, and
  - (b) in sub-paragraph (5)—
    - (i) for “The group that makes a determination on a reference under section 120” substitute “The CMA”, and
    - (ii) for “the determination” substitute “a determination on a reference under section 120”.

*Civil Aviation Act 2012 (c. 19)*

- 140 The Civil Aviation Act 2012 is amended as follows.
- 141 (1) Section 24 (appeals: conditions of new licences) is amended as follows.
  - (2) In subsections (1), (3) and (5), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”.
  - (3) In the heading, for “Competition Commission” substitute “Competition and Markets Authority”.
- 142 (1) Section 25 (appeals: modification of licence conditions) is amended as follows.
  - (2) In subsections (1), (3), (5) and (7), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”.
  - (3) In the heading, for “Competition Commission” substitute “Competition and Markets Authority”.
- 143 In section 26 (when appeals may be allowed), for “Competition Commission” substitute “Competition and Markets Authority”.
- 144 (1) Section 27 (determination of appeal) is amended as follows.

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- (2) In subsection (1) for “Competition Commission” substitute “Competition and Markets Authority”.
- (3) In subsection (2)—
- (a) for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (b) for “the Commission” substitute “the Competition and Markets Authority”.
- (4) In subsection (4)—
- (a) for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (b) for “the Commission” substitute “the Competition and Markets Authority”.
- (5) In subsection (5), for “Competition Commission” substitute “Competition and Markets Authority”.
- 145 (1) Section 28 (determination of appeal: time limits) is amended as follows.
- (2) In subsections (1), (3) and (4), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”.
- (3) In subsection (5)—
- (a) for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (b) for “the Commission” substitute “the Competition and Markets Authority”.
- (4) In subsections (6) to (8), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”.
- 146 (1) Section 29 (determination of appeal: publication etc) is amended as follows.
- (2) In subsection (1)—
- (a) for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (b) for “the Commission” substitute “the Competition and Markets Authority”.
- (3) In subsections (3) and (4), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”.
- (4) In subsection (5)—
- (a) for “Competition Commission” substitute “Competition and Markets Authority” and
  - (b) for “Commission’s opinion” (in each place where those words occur) substitute “opinion of the Competition and Markets Authority”.
- 147 (1) Section 30 (procedure on appeals) is amended as follows.
- (2) In subsection (2), for “Competition Commission” substitute “Competition and Markets Authority”.
- (3) For subsection (4) substitute—
- “(4) Except where specified otherwise in Schedule 2, the functions of the Competition and Markets Authority with respect to an appeal under section 24 or 25 are to be carried out on behalf of the Competition and Markets Authority by a group constituted for the purpose, by the chair of the

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Competition and Markets Authority, under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”

- 148 (1) Schedule 2 (appeals under sections 24 and 25) is amended as follows.
- (2) In paragraph 2—
- (a) in sub-paragraph (1)—
    - (i) for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”,
  - (b) in sub-paragraphs (5) and (6), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”,
  - (c) in sub-paragraph (7), for “The Competition Commission” substitute “An authorised member of the Competition and Markets Authority”, and
  - (d) in sub-paragraph (8), in paragraph (d), for “Commission” substitute “authorised member”.
- (3) In paragraph 3, in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”.
- (4) In paragraph 4—
- (a) in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”,
  - (b) in sub-paragraph (2), for “on which the Competition Commission publishes its” substitute “of publication of the Competition and Markets Authority’s”, and
  - (c) in sub-paragraph (3), for “Competition Commission” substitute “Competition and Markets Authority”.
- (5) In paragraph 5—
- (a) in sub-paragraph (1)—
    - (i) for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”,
  - (b) in sub-paragraph (2), for “Competition Commission” substitute “Competition and Markets Authority”,
  - (c) in sub-paragraph (4), for “The Competition Commission must” substitute “An authorised member of the Competition and Markets Authority must”, and
  - (d) in sub-paragraph (5), in paragraph (d), for “Commission” substitute “authorised member”.
- (6) In paragraph 6, in sub-paragraph (3), for “Competition Commission” substitute “Competition and Markets Authority”.
- (7) In paragraph 7, in sub-paragraph (3), for “Competition Commission” substitute “Competition and Markets Authority”.
- (8) In paragraph 8, in sub-paragraph (3), for “Competition Commission” substitute “Competition and Markets Authority”.

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- (9) In paragraph 9, in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”.
- (10) In paragraph 10, in sub-paragraph (3), for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”.
- (11) In paragraph 11—
- (a) in sub-paragraph (1)—
    - (i) for “Competition Commission’s functions” substitute “functions of the Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”,
  - (b) in sub-paragraph (2), for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (c) in sub-paragraph (4)—
    - (i) for “The Competition Commission” substitute “An authorised member of the Competition and Markets Authority”, and
    - (ii) for first “it” substitute “he or she”.
- (12) In paragraph 12, in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”.
- (13) In paragraph 13, in sub-paragraph (3), for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”.
- (14) In paragraph 14—
- (a) in sub-paragraph (1)—
    - (i) for “Competition Commission’s functions” substitute “functions of the Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”,
  - (b) in sub-paragraph (2), for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (c) in sub-paragraph (4)—
    - (i) for “The Competition Commission” substitute “An authorised member of the Competition and Markets Authority”, and
    - (ii) for first “it” substitute “he or she”.
- (15) In paragraph 15—
- (a) in sub-paragraph (1), for “The Competition Commission must” substitute “An authorised member of the Competition and Markets Authority must”,
  - (b) in sub-paragraph (2), for “the Competition Commission must comply with sub-paragraph (1)” substitute “the requirements of sub-paragraph (1) must be complied with”,
  - (c) in sub-paragraph (3), for “The Competition Commission must” substitute “An authorised member of the Competition and Markets Authority must”, and
  - (d) in sub-paragraph (4), in paragraph (d), for “Commission” substitute “authorised member”.
- (16) In paragraph 16—

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- (a) in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”, and
  - (b) in sub-paragraph (4), in paragraph (a), for “the Competition Commission” substitute “an authorised member of the Competition and Markets Authority”.
- (17) In paragraph 17—
- (a) omit sub-paragraph (1),
  - (b) in sub-paragraph (2)—
    - (i) for “The group” substitute “A group constituted by the chair of the Competition and Markets Authority, under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, for the purpose of carrying out functions of the Competition and Markets Authority with respect to an appeal under section 24 or 25”, and
    - (ii) for “Competition Commission” substitute “CMA panel”, and
  - (c) omit sub-paragraphs (3) and (4).
- (18) Omit paragraph 18.
- (19) In paragraph 19, in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”.
- (20) In paragraph 20—
- (a) in sub-paragraph (1)—
    - (i) for “A group with the function of determining an appeal” substitute “The Competition and Markets Authority”,
    - (ii) for “the appeal” substitute “an appeal”, and
    - (iii) for “Competition Commission” substitute “Competition and Markets Authority”,
  - (b) in sub-paragraph (3)—
    - (i) for “A group with the function of determining an appeal” substitute “The Competition and Markets Authority”, and
    - (ii) for “the appeal” substitute “an appeal”, and
  - (c) in sub-paragraph (4)—
    - (i) for “A group with the function of determining an appeal” substitute “The Competition and Markets Authority”, and
    - (ii) for “the appeal” substitute “an appeal”.
- (21) In paragraph 21, in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”.
- (22) In paragraph 22—
- (a) in sub-paragraphs (1) and (2), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”,
  - (b) in sub-paragraph (3), for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”,
  - (c) in sub-paragraph (4)—
    - (i) for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”,

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- (d) in sub-paragraphs (5) and (6), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”,
  - (e) in sub-paragraph (7)—
    - (i) for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”, and
    - (ii) for “Commission” (in each place where it occurs) substitute “Competition and Markets Authority”, and
  - (f) in sub-paragraph (9)—
    - (i) for “Competition Commission’s decision” substitute “decision of the Competition and Markets Authority”, and
    - (ii) for “Commission” (in each place where it occurs) substitute “Competition and Markets Authority”.
- (23) In paragraph 23, in sub-paragraph (1), for “Competition Commission” substitute “Competition and Markets Authority”.
- (24) In paragraph 24—
- (a) in sub-paragraph (1)—
    - (i) for “Competition Commission” substitute “Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”, and
  - (b) in sub-paragraph (4), for the words from “on the” to the end substitute “on behalf of the Competition and Markets Authority by an authorised member of the Competition and Markets Authority”.
- (25) In paragraph 25—
- (a) in sub-paragraph (1), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”,
  - (b) in sub-paragraph (3), for “The Competition Commission” substitute “An authorised member of the Competition and Markets Authority”,
  - (c) in sub-paragraph (7), in paragraph (a), for “the Competition Commission is not required” substitute “there is no requirement”,
  - (d) in sub-paragraph (9), for “the Competition Commission must pay the person” substitute “an authorised member of the Competition and Markets Authority must arrange for the person to be paid”, and
  - (e) in sub-paragraph (10), for the words from “on the” to the end substitute “on behalf of the Competition and Markets Authority by an authorised member of the Competition and Markets Authority”.
- (26) In paragraph 26—
- (a) in sub-paragraph (1), for “Competition Commission” (in each place where it occurs) substitute “Competition and Markets Authority”, and
  - (b) in sub-paragraph (5), for the words from “on the” to the end substitute “on behalf of the Competition and Markets Authority by an authorised member of the Competition and Markets Authority”.
- (27) In paragraph 27, for “Competition Commission” substitute “Competition and Markets Authority”.



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- (28) In paragraph 28, in sub-paragraph (2), for “A member of the Competition Commission” substitute “An authorised member of the Competition and Markets Authority”.
- (29) In paragraph 30—
- (a) in sub-paragraphs (1) to (4), for “the Competition Commission” (in each place where it occurs) substitute “the Competition and Markets Authority”,
  - (b) after sub-paragraph (4), insert—
    - “(4A) For the purposes of sub-paragraphs (1) to (4), the consent of the Competition and Markets Authority is to be given by an authorised member of the Competition and Markets Authority.”,
    - and
  - (c) in sub-paragraph (6), for “Competition Commission” substitute “Competition and Markets Authority”.
- (30) In paragraph 31, in sub-paragraphs (1), (5) and (6), for “Competition Commission” (in each place where it occurs) substitute “CMA Board”.
- (31) In paragraph 32—
- (a) in sub-paragraph (1)—
    - (i) for “Competition Commission” substitute “Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”,
  - (b) in sub-paragraph (2)—
    - (i) for “Competition Commission” substitute “Competition and Markets Authority”, and
    - (ii) for “the Commission” substitute “the Competition and Markets Authority”, and
  - (c) in sub-paragraphs (3) and (4), for “Competition Commission” (in each place where it occurs) substitute “group”.
- (32) In paragraph 34—
- (a) for “Competition Commission” substitute “Competition and Markets Authority or a member of the Competition and Markets Authority”, and
  - (b) “it must publish or send it” substitute “it must be published or sent”.
- (33) In paragraph 35, in sub-paragraph (1)—
- (a) for the definition of “authorised member of the Competition Commission” substitute—
    - ““authorised member of the Competition and Markets Authority—
    - (a) in relation to a power exercisable in connection with an appeal or application or direction in respect of which a group has been constituted by the chair of the Competition and Markets Authority under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the Competition and Markets Authority to exercise that power;
    - (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in

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connection with an appeal or application or direction in respect of which a group has not been so constituted by the chair of the Competition and Markets Authority, means—

- (i) any member of the CMA Board who is also a member of the CMA panel, or
  - (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;”,
- (b) omit the definition of “Chairman”,
  - (c) omit the definition of “a group”, and
  - (d) before the definition of “intervener” insert—  
““CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;”.

## PART 2

### AMENDMENTS TO OTHER ENACTMENTS

#### *Electricity (Northern Ireland) Order 1992 (SI 1992/231 (N.I. 1))*

- 149 The Electricity (Northern Ireland) Order 1992 is amended as follows.
- 150 In article 2 (interpretation), in paragraph (2), before the definition of “the Department” insert—  
““the CMA” means the Competition and Markets Authority;”.
- 151 (1) Article 15 (modification references) is amended as follows.
- (2) In paragraph (1)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (3) In paragraph (2)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (4) In paragraph (3), for “Competition Commission” substitute “CMA”.
  - (5) In paragraph (5)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (6) In paragraph (6)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
  - (7) In paragraph (7), for “Competition Commission” substitute “CMA”.
  - (8) After paragraph (7) insert—  
“(7A) The functions of the CMA with respect to a reference under this Article are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and

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Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by Articles 15B and 17A).”

- (9) In paragraph (9), for the words from “members” to the end substitute “persons to membership of the CMA for the purpose of being available for selection as members of a group constituted to carry out functions on behalf of the CMA with respect to a reference under this Article”.
- (10) In paragraph (9A), for “selecting” substitute “constituting”.
- (11) In the heading, for “Monopolies Commission” substitute “CMA”.
- 152 In article 15A (references under article 15: time limits), in paragraphs (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 153 (1) Article 16 (reports on modification references) is amended as follows.
- (2) In paragraph (1), for “Competition Commission” substitute “CMA”.
- (3) In paragraph (1A)—
- (a) for “Competition Commission” substitute “CMA”, and
- (b) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- (4) In paragraphs (1B), (3) to (3C) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 154 In article 17 (modification following report), in paragraphs (1) and (5), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 155 (1) Article 17A (power to veto modifications following report) is amended as follows.
- (2) In paragraph (1), for the words from the beginning to “Commission”)” substitute “The CMA”.
- (3) In paragraphs (2) to (8), (10) to (12), (14) and (16), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Competition Commission’s” substitute “CMA’s”.
- 156 In article 18 (modification by order under other statutory provisions), in paragraph (1), for “Office of Fair Trading, the Competition Commission” substitute “CMA”.
- 157 (1) Article 53 (annual and other reports) is amended as follows.
- (2) In paragraph (1)(a)(ii), for “Competition Commission” substitute “CMA’s”.
- (3) Omit paragraph (6).

*Gas (Northern Ireland) Order 1996 (SI 1996/275 (N.I.2))*

- 158 The Gas (Northern Ireland) Order 1996 is amended as follows.
- 159 In article 2 (interpretation), in paragraph (2), before the definition of “construction” insert—
- ““the CMA” means the Competition and Markets Authority;”.

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- 160 (1) Article 15 (modification references) is amended as follows.
- (2) In paragraph (1)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (3) In paragraph (2)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (4) In paragraph (3)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (5) In paragraph (4), for “Competition Commission” substitute “CMA”.
- (6) In paragraph (6)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (7) In paragraph (7)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
- (8) In paragraph (8), for “Competition Commission” substitute “CMA”.
- (9) After paragraph (8) insert—
- “(8A) The functions of the CMA with respect to a reference under this Article are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by Articles 15B and 17A).”
- (10) In the heading, for “Monopolies Commission” substitute “Competition and Markets Authority”.
- 161 In article 15A (references under article 15: time limits), in paragraphs (2) and (3), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 162 (1) Article 16 (reports on modification references) is amended as follows.
- (2) In paragraph (1), for “Competition Commission” substitute “CMA”.
- (3) In paragraph (1A)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- (4) In paragraphs (1B), (3) to (3C) and (4), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
- 163 In article 17 (modification following report), in paragraphs (1) and (5A), for “Competition Commission” (in each place where it occurs) substitute “CMA”.

- 164 (1) Article 17A (power to veto modifications following report) is amended as follows.
- (2) In paragraph (1), for the words from the beginning to “Commission”)” substitute “The CMA”.
- (3) In paragraphs (2) to (10), (13) to (15), (17) and (19), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Competition Commission’s” substitute “CMA’s”.
- 165 In article 18 (modification by order under other statutory provisions), in paragraph (1), for “Office of Fair Trading, the Competition Commission” substitute “CMA”.
- 166 (1) Article 32 (annual and other reports) is amended as follows.
- (2) In paragraph (1)(a)(ii), for “Monopolies Commission’s” substitute “CMA’s”.
- (3) Omit paragraph (6).

*Energy (Northern Ireland) Order 2003 (SI 2003/419 (N.I. 6))*

- 167 The Energy (Northern Ireland) Order 2003 is amended as follows.
- 168 (1) Article 6 (annual and other reports of the Authority) is amended as follows.
- (2) In paragraph (1)(b), for “Competition Commission” substitute “Competition and Markets Authority”.
- (3) Omit paragraph (10).
- 169 In article 38 (modification of licences), in paragraphs (1) and (2), for “, the Office of Fair Trading or the Competition Commission” (in each place where those words occur) substitute “or the Competition and Markets Authority”.
- 170 (1) Schedule 2 (orders altering licensable activities) is amended as follows.
- (2) In paragraph 1, after sub-paragraph (3), insert—
- “*(4) In this Schedule, “the CMA” means the Competition and Markets Authority.*”
- (3) In paragraph 2—
- (a) in sub-paragraph (4), for “Competition Commission” substitute “CMA”, and
- (b) in sub-paragraphs (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the italic cross-heading preceding paragraph 3, for “Competition Commission” substitute “CMA”.
- (5) In paragraph 3—
- (a) in sub-paragraph (1)—
- (i) for “Competition Commission” substitute “CMA”, and
- (ii) for “the Commission” substitute “the CMA”,
- (b) in sub-paragraphs (2), (3), (5) and (6), for “Commission” (in each place where it occurs) substitute “CMA”, and
- (c) after sub-paragraph (6), insert—

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“(7) The functions of the CMA with respect to a reference under this paragraph (including functions under sections 109 to 115 of the Enterprise Act 2002, as applied by paragraph 5) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.”

- (6) In paragraph 4—
- (a) in sub-paragraph (2), for “Competition Commission” substitute “CMA”, and
  - (b) in sub-paragraph (3), for “Commission” substitute “CMA”.
- (7) In paragraph 5, in sub-paragraph (4)—
- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for the words from “the words” to the end, substitute “for the words “, OFCOM or the Secretary of State” there were substituted “or OFCOM”.
- (8) In paragraph 6—
- (a) in sub-paragraph (1), for “Competition Commission” substitute “CMA”,
  - (b) in sub-paragraphs (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”,
  - (c) in sub-paragraph (4)—
    - (i) for “Commission” substitute “CMA”, and
    - (ii) for the words from “in connection with” to the end substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”, and
  - (d) in sub-paragraphs (5) to (9) and (11), for “Commission” (in each place where it occurs) substitute “CMA”.

*Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172)*

- 171 The Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 is amended as follows.
- 172 In article 2 (interpretation), in paragraph (1), for the definition of “the Commission” substitute—
- ““the CMA” means the Competition and Markets Authority;”.
- 173 (1) Article 3 (references) is amended as follows.
- (2) In paragraphs (1), (5) to (9), and (11) and (12), for “Commission” substitute “CMA”.
  - (3) After paragraph (12) insert—
 

“(13) The functions of the CMA with respect to a reference under this article are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by articles 5 and 10).”
  - (4) In the heading, for “Commission” substitute “CMA”.

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- 174 In article 4 (references: time limits), in paragraphs (2) and (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- 175 In article 5 (references: powers of investigation), in paragraph (4)(a), for paragraph (i) substitute—  
“(i) the words “, OFCOM or the Secretary of State” were omitted;”.
- 176 (1) Article 6 (consultation on proposals) is amended as follows.
- (2) In paragraphs (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In the heading, for “Commission” substitute “CMA”.
- 177 (1) Article 7 (reports on references) is amended as follows.
- (2) In paragraphs (1) to (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In paragraph (6)—
- (a) for “Commission” substitute “CMA”, and
- (b) for the words from “constituted,” to the end substitute “constituted by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference”.
- (4) In paragraphs (7) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In paragraph (10), for “Commission’s” substitute “CMA’s”.
- (6) In paragraph (12), for “Commission” substitute “CMA”.
- 178 (1) Article 8 (modifications following report) is amended as follows.
- (2) In paragraph (1), for “Commission” substitute “CMA”.
- (3) In paragraph (2)—
- (a) for “Commission” substitute “CMA”, and
- (b) for “Commission’s” substitute “CMA’s”.
- (4) In paragraph (3), for “Commission’s” substitute “CMA’s”.
- (5) In paragraph (6), for “Commission” substitute “CMA”.
- 179 (1) Article 9 (power of veto following report) is amended as follows.
- (2) In paragraphs (1) to (3), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In paragraph (4)—
- (a) for “Commission” (in each place where it occurs) substitute “CMA”, and
- (b) for “Commission’s” (in each place where it occurs) substitute “CMA’s”.
- (4) In paragraphs (5) to (8), for “Commission” (in each place where it occurs) substitute “CMA”.
- (5) In the heading, for “Commission’s” substitute “CMA’s”.
- 180 (1) Article 10 (article 9: supplementary) is amended as follows.

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- (2) In paragraphs (2), (3) and (5), for “Commission” (in each place where it occurs) substitute “CMA”.
- (3) In paragraph (6)(a), for paragraph (i) substitute—
  - “(i) the words “, OFCOM or the Secretary of State” were omitted;”.

*Water and Sewerage Services (Northern Ireland) Order 2006 (SI 2006/3336 N.I. 21))*

- 181 The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.
- 182 In article 2 (interpretation), in paragraph (2)—
  - (a) after the definition of “the Authority”, insert—
    - ““the CMA” means the Competition and Markets Authority;”, and
  - (b) omit the definition of “the OFT”.
- 183 (1) Article 19 (determinations under conditions of appointment) is amended as follows.
  - (2) In paragraph (2)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (3) In paragraph (3)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “that Commission” (in each place where it occurs) substitute “the CMA”.
  - (4) In paragraph (4)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
  - (5) In paragraph (5), for “Competition Commission” substitute “CMA”.
  - (6) In paragraph (6)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (7) After paragraph (6) insert—
    - “(7) The functions of the CMA with respect to a reference under this Article are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act, as applied by paragraph (5) read with Article 27).”
- 184 (1) Article 21 (modification references) is amended as follows.
  - (2) In paragraph (1)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for “the Commission” substitute “the CMA”.
  - (3) In paragraph (2)—



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- (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” substitute “the CMA”.
- (4) In paragraph (3), for “Competition Commission” substitute “CMA”.
- (5) In paragraph (5)—
  - (a) for “Competition Commission” substitute “CMA”, and
  - (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.
- (6) In paragraph (6), for “Competition Commission” substitute “CMA”.
- (7) After paragraph (6) insert—
  - “(7) The functions of the CMA with respect to a reference under this Article are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by Articles 23 and 27).”
- (8) In the heading, for “Competition Commission” substitute “CMA”.
- 185 In article 22 (references under article 21: time limits), in paragraphs (2) and (3), for  
“Competition Commission” (in each place where it occurs) substitute “CMA”.
- 186 (1) Article 24 (reports on modification references) is amended as follows.
  - (2) In paragraph (1), for “Competition Commission” substitute “CMA”.
  - (3) In paragraph (2)—
    - (a) for “Competition Commission” substitute “CMA”, and
    - (b) for the words from “in connection with” to the end, substitute “by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference in question”.
  - (4) In paragraphs (3) to (5), for “Competition Commission” (in each place where it occurs) substitute “CMA”.
  - (5) In paragraphs (6) and (7), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (6) In paragraph (9), for “Competition Commission” substitute “CMA”.
- 187 In article 25 (modifications following report), in paragraphs (1) and (5), for  
“Competition Commission” substitute “CMA”.
- 188 (1) Article 26 (power of veto following report) is amended as follows.
  - (2) In paragraph (1), for “Competition Commission” substitute “CMA”.
  - (3) In paragraphs (2) to (9), for “Commission” (in each place where it occurs) substitute “CMA”.
  - (4) In the heading, for “Commission’s” substitute “CMA’s”.
- 189 (1) Article 27 (power of veto following report: supplementary) is amended as follows.
  - (2) In paragraph (2), for “Competition Commission” substitute “CMA”.

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- (3) In paragraphs (3), (4), (6) and (8), for “Commission” (in each place where it occurs) substitute “CMA”.
- (4) In the heading, for “Commission’s” substitute “CMA’s”.
- 190 In article 28 (modification by order under other statutory provisions), in paragraph (1)
  - (a) for “OFT, the Competition Commission” substitute “CMA”, and
  - (b) for “OFT, the Commission” substitute “CMA”.
- 191 In article 57 (restrictions on disclosure of information), in sub-paragraph (7), for “Competition Commission” substitute “CMA”.

*Legal Services (Scotland) Act 2010 (asp 16)*

- 192 The Legal Services (Scotland) Act 2010 is amended as follows.
- 193 In section 8 (pre-approval consideration), in subsection (1)(b), for “OFT” substitute “CMA”.
- 194 In section 15 (initial considerations), in subsections (1) and (2), for “OFT” (in each place where it occurs) substitute “CMA”.
- 195 In section 28 (communicating outside), in subsection (1)(e), for “OFT” substitute “CMA”.
- 196 In section 49 (majority ownership), in subsection (5)(b)(iii), for “OFT” substitute “CMA”.
- 197 (1) Section 76 (input) is amended as follows.
  - (2) In subsections (1) to (3), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In the heading, for “OFT” substitute “CMA”.
- 198 In section 92 (certification of bodies), in subsections (4) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 199 In section 103 (certification of bodies), in subsections (4) and (5), for “OFT” (in each place where it occurs) substitute “CMA”.
- 200 (1) Section 113 (regard to input) is amended as follows.
  - (2) In subsections (1) to (3), for “OFT” (in each place where it occurs) substitute “CMA”.
  - (3) In the heading, for “OFT” substitute “CMA”.
- 201 In section 122 (particular rules), in subsection (2), for “OFT” substitute “CMA”.
- 202 In section 125 (citizens advice bodies), in subsection (4)(b), for “OFT” substitute “CMA”.
- 203 In section 147 (further modification), in subsection (3)(d), for “OFT” substitute “CMA”.
- 204 (1) In section 149 (definitions), in subsection (1)—
  - (a) after the definition of “the 2007 Act” insert—
    - ““CMA” means Competition and Markets Authority,” and”
  - (b) omit the definition of “OFT”.

- 205 In schedule 2 (directions), in paragraph 4, in sub-paragraph (3), for “OFT” (in each place where it occurs) substitute “CMA”.
- 206 In schedule 5 (amendment of authorisation), in paragraph 4, in sub-paragraph (2)(b)(i), for “OFT” substitute “CMA”.
- 207 In schedule 6 (rescission of authorisation), in paragraph 4, in sub-paragraph (2)(b)(i), for “OFT” substitute “CMA”.
- 208 In schedule 7 (surrender of authorisation), in paragraph 3, in sub-paragraph (1)(a)(ii), for “OFT” substitute “CMA”.
- 209 In schedule 9 (index of expressions used), in the first table, in the column headed “Whole Act expressions”—
- (a) after the reference to “advocate”, insert a reference to “CMA”;
  - (b) omit the reference to “OFT”.

## SCHEDULE 7

Section 30(10)

### MERGERS: INTERIM MEASURES

#### *Interim measures following references under section 22 or 33*

- 1 Part 3 of the 2002 Act (mergers) is amended as follows.
- 2 (1) Section 80 (interim undertakings) is amended as follows.
- (2) In subsection (1), for “Subsections (2) and (3)” substitute “Subsections (2) and (2A)”.
  - (3) After subsection (2) insert—
    - “(2A) Where the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.”
  - (4) After subsection (2A) insert—
    - “(2B) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an undertaking under this section.”
  - (5) Omit subsections (3) and (4).
  - (6) In subsection (5), for “Any other undertaking” substitute “An undertaking”.
  - (7) Omit subsection (6).
- 3 (1) Section 81 (interim orders) is amended as follows.
- (2) In subsection (1) for “Subsections (2) and (3)” substitute “Subsections (2) and (2A)”.
  - (3) After subsection (2) insert—

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“(2A) Where the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may by order, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects—

- (a) do anything mentioned in subsection (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”

(4) After subsection (2A) insert—

“(2B) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.”

(5) Omit subsections (3) and (4).

(6) In subsection (5), for “Any other order” substitute “An order”.

(7) Omit subsection (6).

*Interim measures: public interest and special interest cases*

4 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.

(2) Omit paragraph 1 (interim undertakings).

(3) In paragraph 2 (interim orders), after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2B) applies where—

- (a) an intervention notice or special intervention notice is in force, and
- (b) the Secretary of State or the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(2B) The Secretary of State or (as the case may be) the CMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—

- (a) do anything mentioned in sub-paragraph (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”

(4) In that paragraph, after sub-paragraph (2B) insert—

“(2C) A person may, with the consent of the Secretary of State or (as the case may be) the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this paragraph by the Secretary of State or (as the case may be) the CMA.”

(5) In that paragraph, in sub-paragraph (4)—

- (a) omit “or the OFT”,
- (b) for “by the OFT” substitute “by the CMA”, and
- (c) omit “or (as the case may be) the OFT”.

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- (6) In that paragraph, in sub-paragraph (8), omit “1 or”.
- (7) In that paragraph, in sub-paragraph (10), for the words from “the order” to the end of the sub-paragraph substitute “—
- (a) the Secretary of State or (as the case may be) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct; or
  - (b) the order relates to a special merger situation which has been, or may have been, created.”
- (8) In that paragraph, after sub-paragraph (11) insert—
- “(12) In this paragraph “pre-emptive action” means action which might prejudice the reference or possible reference concerned under section 45 or (as the case may be) 62 or impede the taking of any action under this Part which may be justified by the Secretary of State’s decisions on the reference.”

*Interim measures: duration of interim orders under section 72*

- 5 (1) Section 72 (initial enforcement orders: completed mergers) is amended as follows.
- (2) Omit subsection (5).
- (3) In subsection (6)—
- (a) in the words before paragraph (a), omit “section 81 or”, and
  - (b) in paragraph (a), for the words from “at the end of” to the end of the paragraph substitute “—
    - (i) if the CMA accepts an undertaking under section 80 or makes an order under section 81, on the acceptance of the undertaking or the making of the order, and
    - (ii) otherwise on the final determination of the reference concerned;”.

SCHEDULE 8

Section 32(2)

MERGERS: TIME-LIMITS

- 1 Part 3 of the 2002 Act (mergers) is amended as follows.
- 2 In section 22 (duty to make references in relation to completed mergers), in subsection (3)—
- (a) before paragraph (a) insert—
    - “(za) the period within which the CMA is required by section 34ZA to decide whether the duty to make the reference applies has expired without such a decision having been made;”, and

- (b) in paragraph (a) omit “or 96(3)”.
- 3 In section 33 (duty to make references in relation to anticipated mergers), in subsection (3)—
- (a) before paragraph (a) insert—
- “(za) the period within which the CMA is required by section 34ZA to decide whether the duty to make the reference applies has expired without such a decision having been made;”, and
- (b) in paragraph (a) omit “or 96(3)”.
- 4 After section 34 insert—

**“34ZA Time-limits for decisions about references**

**“34ZA “34ZA Time-limits for decisions about references**

- (1) In carrying out its function of deciding whether to make a reference under section 22 or 33, the CMA shall, within the initial period—
- (a) decide whether the duty to make a reference under the section applies (taking account of the power under section 22(2) or (as the case may be) 33(2) and the operation of section 22(3) or (as the case may be) 33(3)); and
- (b) inform the persons carrying on the enterprises concerned by notice of the decision and of the reasons for it.
- (2) Nothing in this section prevents the CMA from making a reference under section 22 or 33 in the event that—
- (a) it decides that the duty to make a reference does not apply because it is considering whether to accept undertakings under section 73; but
- (b) no such undertakings are offered or accepted.
- (3) In this section—
- “the initial period” means (subject to any extension under section 34ZB) the period of 40 working days beginning with—
- (a) where the CMA is carrying out its function in consequence of the giving of a merger notice under section 96, the first working day after the day on which the CMA gives notice under section 96(2A) to the person who gave the merger notice, and
- (b) in any other case, the first working day after the day on which the CMA informs the persons carrying on the enterprises concerned by notice that it has sufficient information to enable it to begin an investigation for the purposes of deciding whether to make a reference;
- “working day” means any day which is not—
- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
- (b) a day which is a bank holiday in England and Wales.
- (4) For the purposes of paragraph (a) in the definition of “initial period” in subsection (3), the CMA is carrying out its function in consequence of the giving of a merger notice under section 96 if it is considering whether to make a reference under section 22 or 33 in relation to—

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*Status: This is the original version (as it was originally enacted).*

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- (a) arrangements of which notice is given in the merger notice or arrangements which do not differ from them in any material respect, or
  - (b) the creation of any relevant merger situation which is, or may be, created in consequence of carrying such arrangements into effect.
- (5) Nothing in this section applies where section 34A(2) or 46A(2) applies (duties where case referred by the European Commission).

### **34ZB Extension of time-limits**

#### **34ZB 34ZB Extension of time-limits**

- (1) The CMA may extend the initial period mentioned in section 34ZA(1) if it considers that a relevant person has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 109 in relation to the case in question.
- (2) In subsection (1), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (3) For the purposes of subsection (2), a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (4) Where an intervention notice is in force in relation to the matter concerned, the CMA may extend the initial period by no more than 20 working days.
- (5) The CMA may by notice extend the initial period if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(1) of the EC Merger Regulation (but is not yet proceeding with the matter in pursuance of such a request).
- (6) An extension under subsection (1) or (4) comes into force when published under section 107.
- (7) An extension under subsection (1) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.
- (8) An extension under subsection (5) shall be for the period which—
  - (a) begins when notice is given under that subsection, and
  - (b) ends when the CMA gives notice of the completion by the European Commission of its consideration of the request of the United Kingdom.
- (9) In this section, “working day” has the same meaning as in section 34ZA.

**34ZC Sections 34ZA and 34ZB: supplementary****34ZC 34ZC Sections 34ZA and 34ZB: supplementary**

- (1) An extension of the period mentioned in section 34ZA(1) may be made under each of subsections (1), (4) or (5) of section 34ZB.
- (2) No more than one extension is possible under section 34ZB(4).
- (3) Where a period is extended or further extended under section 34ZB(1), (4) or (5), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period mentioned in section 34ZA(1) is further extended;
  - (b) the further extension and at least one previous extension is made under one or more of subsections (1) and (5) of section 34ZB; and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order do either or both of the following—
  - (a) amend section 34ZA so as to alter the period of 40 working days mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) amend section 34ZB so as to alter the period of 20 working days mentioned in subsection (4) of that section or any period for the time being mentioned in that subsection in substitution for that period.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
  - (a) the period for the time being mentioned in section 34ZA(3) exceeding 40 working days; or
  - (b) the period for the time being mentioned in section 34ZB(4) exceeding 20 working days.
- (8) Before making an order under subsection (6), the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.
- (9) In this section, “working day” has the same meaning as in section 34ZA.”

- 5 (1) Section 39 (time-limits for investigations and reports) is amended as follows.
- (2) In subsection (5) for “subsection (4)” substitute “this section”.
- (3) After subsection (8) insert—
  - “(8A) In the case of a report on a reference under section 33, the CMA may provide that a specified period of no more than 3 weeks is to be disregarded for the



purposes of any time-limit for the preparation and publication of the report which applies by virtue of this section if—

- (a) a relevant person has so requested before the end of the period of 3 weeks beginning with the date of the reference concerned; and
- (b) the CMA reasonably believes that the arrangements in question might be abandoned.

(8B) If the CMA exercises the power under subsection (8A), the CMA shall publish a notice to that effect.”

6 After section 41 (duty to remedy effects of completed or anticipated mergers) insert—

**“41A Time-limit for discharging duty under section 41**

**“41A “41A Time-limit for discharging duty under section 41**

- (1) The CMA shall discharge its duty under section 41(2) within the period of 12 weeks beginning with the date on which it publishes the report concerned under section 38.
- (2) The CMA may extend, by no more than 6 weeks, the period within which its duty under section 41(2) shall be discharged if it considers that there are special reasons for doing so.
- (3) The CMA may extend the period within which its duty under section 41(2) shall be discharged if it considers that a relevant person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 109 which is given in relation to the reference.
- (4) In subsection (3), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (5) For the purposes of subsection (4), a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (6) An extension under subsection (2) or (3) comes into force when published under section 107.
- (7) An extension under subsection (3) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.

**41B Section 41A: supplementary****41B 41B Section 41A: supplementary**

- (1) A period extended under section 41A(2) may also be extended under section 41A(3), and a period extended under section 41A(3) may also be extended under section 41A(2).
- (2) No more than one extension is possible under section 41A(2).
- (3) Where a period is extended or further extended under section 41A(2) or (3), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period within which the CMA must discharge its duty under section 41(2) is further extended;
  - (b) the further extension and at least one previous extension is made under section 41A(3); and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order amend section 41A so as to alter either or both of the following periods—
  - (a) the period of 12 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) the period of 6 weeks mentioned in subsection (2) of that section or any period for the time being mentioned in that subsection in substitution for that period.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
  - (a) the period for the time being mentioned in section 41A(1) exceeding 12 weeks; or
  - (b) the period for the time being mentioned in section 41A(2) exceeding 6 weeks.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

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After section 73 (undertakings in lieu of references under section 22 or 33) insert—

### **“73A Time-limits for consideration of undertakings**

#### **“73A “73A Time-limits for consideration of undertakings**

- (1) A party concerned who wishes to offer an undertaking to the CMA for the purposes of section 73(2) must do so before the end of the period of 5 working days beginning with—
  - (a) the day after the CMA gives the person the notice required by section 34ZA(1)(b); or
  - (b) in a case where subsection (2) of section 34A applies, the day after the CMA gives the person the notice required by paragraph (b) of that subsection.
- (2) If an undertaking is offered for those purposes, the CMA shall, before the end of the period of 10 working days beginning with the day mentioned in subsection (1)—
  - (a) decide whether there are reasonable grounds for believing that the undertaking or a modified version of it might be accepted by the CMA under section 73(2), and
  - (b) if it considers that it might be, give notice to the person who offered the undertaking that it is considering it.
- (3) If such a notice is given, the CMA shall decide whether to accept the undertaking before the end of the period of 50 working days beginning with the day mentioned in subsection (1).
- (4) The CMA may extend the period mentioned in subsection (3), by no more than 40 working days, if it considers that there are special reasons for doing so.
- (5) The CMA shall prepare and publish guidance in relation to the exercise of its power under subsection (4).
- (6) The CMA may revise any such guidance and, where it does so, shall publish the revised statement.
- (7) The CMA may extend the period mentioned in subsection (3) if it considers that a relevant person has failed (with or without reasonable excuse) to comply with any requirement of a notice given under section 109 in relation to the case in question.
- (8) In subsection (7), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (9) For the purposes of subsection (8), a person or group of persons able, directly or indirectly, to control or materially influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

- (10) An extension under subsection (4) or (7) comes into force when published under section 107.
- (11) An extension under subsection (7) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.
- (12) In this section and section 73B, “working day” means any day which is not—
  - (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
  - (b) a day which is a bank holiday in England and Wales.

**73B Section 73A: supplementary****73B 73B Section 73A: supplementary**

- (1) A period extended under section 73A(4) may also be extended under section 73A(7), and a period extended under section 73A(7) may also be extended under section 73A(4).
- (2) No more than one extension is possible under section 73A(4).
- (3) Where a period is extended or further extended under section 73A(4) or (7), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period within which the CMA must discharge its duty under section 73A(3) is further extended,
  - (b) the further extension and at least one previous extension is made under section 73A(7), and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order amend section 73A so as to alter one or more of the periods for the time being mentioned in the section.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
  - (a) the period mentioned in section 73A(1) exceeding 5 working days;
  - (b) the period mentioned in section 73A(2) exceeding 10 working days;
  - (c) the period mentioned in section 73A(3) exceeding 50 working days;
  - (d) the period mentioned in section 73A(4) exceeding 40 working days.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

- 8 (1) Section 96 (merger notices) is amended as follows.
- (2) In subsection (1), for the words from “of proposed arrangements” to the end of the subsection substitute “of arrangements or proposed arrangements which might have resulted or might result in the creation of a relevant merger situation.”
- (3) In subsection (2) after paragraph (a) (and before the “and” immediately following it) insert—
- “(aa) shall contain the prescribed information;”.
- (4) After subsection (2) insert—
- “(2A) Where the CMA is satisfied that a merger notice meets the requirements of subsection (2), it shall give notice to that effect to the person who gave the merger notice.”
- (5) Omit subsections (3) and (4).
- 9 Sections 97 and 98 (period for considering merger notices) are omitted.
- 10 (1) Section 99 (certain functions in relation to merger notices) is amended as follows.
- (2) In subsection (1), for “the period for considering any merger notice begins” substitute “the initial period (within the meaning of section 34ZA) begins in relation to the merger notice”.
- (3) In subsection (5), for “the period for considering any merger notice” substitute “the initial period (within the meaning of section 34ZA) in relation to a merger notice”.
- 11 (1) Section 100 (exceptions to protection given by merger notices) is amended as follows.
- (2) In subsection (1)—
- (a) in the words before paragraph (a), for “Section 96(3) does not” substitute “Sections 22(3)(za) and 33(3)(za) do not”,
- (b) in those words, for “to the Commission” substitute “under section 22 or (as the case may be) 33”,
- (c) in paragraph (a), for “the period for considering the merger notice” substitute “the initial period (within the meaning of section 34ZA) in relation to the merger notice”,
- (d) omit paragraph (b),
- (e) in paragraph (c), omit the words from “by such time” to the end of the paragraph, and
- (f) in paragraph (e), for “the period for considering the merger notice” substitute “the initial period (within the meaning of section 34ZA) in relation to the merger notice”.
- (3) In subsection (2)—
- (a) in paragraph (a), for “section 22, 33 or 45” substitute “section 22 or 33”, and
- (b) in paragraph (b), for “section 96(3) does not” substitute “sections 22(3)(za) and 33(3)(za) do not”.
- (4) In subsection (3), for “Section 96(3) does not” substitute “Sections 22(3)(za) and 33(3)(za) do not”.
- 12 (1) Section 101 (merger notices: regulations) is amended as follows.

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*Status: This is the original version (as it was originally enacted).*

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- (2) In subsection (2), in paragraph (a), omit “section 97(1), (2), (3) or (4) or”.
- (3) In that subsection, omit paragraphs (c) to (f).
- 13 (1) Section 124 (order and regulations under Part 3) is amended as follows.
  - (2) In subsection (4)—
    - (a) after “section” insert “34ZC(6),”,
    - (b) after “40(8),” insert “41B(6),”, and
    - (c) after “68,” insert “, 73B(6),”.
  - (3) In subsection (5)—
    - (a) after “67(7),” insert “34ZC(6),”,
    - (b) after “40(8),” insert “41B(6),”, and
    - (c) after “65(3),” insert “73B(6),”.

## SCHEDULE 9

Section 34(4)

## MARKETS: CROSS-MARKET REFERENCES

- 1 Part 4 of the 2002 Act (market investigations) is amended as follows.
- 2 (1) Section 133 (contents of references) is amended as follows.
  - (2) In subsection (1)—
    - (a) omit the “and” following paragraph (b),
    - (b) in paragraph (c), at the beginning insert “in the case of an ordinary reference,” and
    - (c) after paragraph (c) insert “; and
    - (d) in the case of a cross-market reference, the feature or features concerned and the descriptions of goods or services to which it or they relate.”
  - (3) In subsection (2)—
    - (a) in paragraph (a), after “a supply” insert “or, in the case of a cross-market reference, supplies”, and
    - (b) in paragraph (b), after “an acquisition” insert “or, in the case of a cross-market reference, acquisitions”.
- 3 (1) Section 134 (questions to be decided on market investigation references) is amended as follows.
  - (2) In subsection (1), for “a market investigation” substitute “an ordinary”.
  - (3) After subsection (1) insert—
    - “(1A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.”

*Status: This is the original version (as it was originally enacted).*

- (4) In subsection (2), for “a market investigation” substitute “an ordinary”.
- (5) After subsection (2) insert—
- “(2A) For the purposes of this Part, in relation to a cross-market reference, there is an adverse effect on competition if a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.”
- (6) In subsection (5)(a), after “the market” insert “or markets”.
- (7) In subsection (7), after “the market” insert “or markets”.
- (8) In subsection (8)(a)(i), after “the market” insert “or markets”.
- 4 In section 138 (duty to remedy adverse effects), in subsection (5), after “the market” insert “or markets”.
- 5 (1) Section 141 (questions to be decided where intervention notice under section 139(1) is in force) is amended as follows.
- (2) In subsection (2), after “shall” insert “, on an ordinary reference,”.
- (3) After subsection (2) insert—
- “(2A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.”
- (4) In subsection (6), after “the market” insert “or markets”.
- 6 In section 147 (remedial action by the Secretary of State), in subsection (5), after “the market” insert “or markets”.
- 7 In section 154 (undertakings in lieu of references), in subsection (4), after “the market” insert “or markets”.
- 8 (1) Section 156 (effect of undertakings under section 154) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) No market investigation reference shall be made by the CMA or the appropriate Minister in relation to any feature, or combination of features, of a market in the United Kingdom for goods or services if—
- (a) the CMA has accepted an undertaking or group of undertakings under section 154 within the previous 12 months;
- (b) the feature or combination of features to which the undertaking or group of undertakings relates is the same as the feature or combination of features to which the reference would relate; and

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*Status: This is the original version (as it was originally enacted).*

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- (c) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which the reference would relate.”
- (3) In subsection (1)—
- (a) in the words before paragraph (a), for “market investigation” substitute “ordinary”,
  - (b) in paragraph (a), after “has” insert “, instead of making an ordinary reference,”, and
  - (c) in paragraph (b), for “the feature, or combination of features, relates” substitute “the reference would relate”.
- (4) In subsection (2), for “Subsection (1) does” substitute “Subsections (A1) and (1) do”.
- 9 (1) Section 184 (index of defined expressions for Part 4) is amended as follows.
- (2) In the second column of the entry for “Adverse effect on competition”, after “134(2)” insert “and (2A)”.
- (3) After the entry in the table for “Consumer” insert—
- |                         |                  |
|-------------------------|------------------|
| “Cross-market reference | Section 131(6)”. |
|-------------------------|------------------|
- (4) Before the entry in the table for “Public interest consideration” insert—
- |                     |                  |
|---------------------|------------------|
| “Ordinary reference | Section 131(6)”. |
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## SCHEDULE 10

Section 35(10)

### MARKETS: PUBLIC INTEREST INTERVENTIONS

- 1 Part 4 of the 2002 Act (market investigations) is amended as follows.
- 2 (1) Section 131 (power to make market investigation references) is amended as follows.
- (2) In subsection (4)(b), after “132” insert “or 140A(6)”.
- (3) In subsection (6), in the definition of “market investigation reference”, after “132” insert “or 140A(6)”.
- 3 In section 132 (ministerial power to make references), in subsection (4)—
- (a) after “if” insert “—  
(a)”,  
and
  - (b) at the end insert “; or  
(b) a reference has been made under section 140A(6) in relation to the same matter but has not been finally determined.”
- 4 In section 135 (variation of references), in subsection (1), for “by it or (as the case may be) by him” substitute “by it under section 131 or (as the case may be) by the appropriate Minister under section 132”.



- 5 (1) Section 140 (supplementary provision about intervention notices under section 139(1)) is amended as follows.
- (2) In subsection (1)—
- (a) for paragraphs (a) and (b) substitute—
- “(a) the matter to which the market study notice or (as the case may be) the consultation under section 169 concerned relates;
- (b) the date of publication of that notice or (as the case may be) on which the process of consultation began;”, and”
- (b) in paragraph (c), for “case” substitute “matter”.
- (3) In subsection (2), for “case” (in the second place where it occurs) substitute “matter”.
- (4) After subsection (4) insert—
- “(4A) An intervention notice under section 139(1) shall also cease to be in force if—
- (a) it mentions a public interest consideration which was not finalised on the giving of the notice or public interest considerations which, at that time, were not finalised;
- (b) no other public interest consideration is mentioned in the notice;
- (c) at least 24 weeks has elapsed since the giving of the notice;
- (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks; and
- (e) the Secretary of State has not, by the end of that period of 24 weeks, made a reference under section 140A in relation to the matter.
- (4B) Subsection (4D) applies in a case where—
- (a) an intervention notice ceases to be in force in accordance with subsection (4A);
- (b) the CMA has, before the time at which the notice ceases to be in force, prepared a market study report in relation to the matter within the period permitted by section 131B(4) and given it to the Secretary of State in accordance with section 140A(3)(b); and
- (c) the report contains the decision of the CMA that it should make a reference in relation to the matter concerned under section 131.
- (4C) Subsection (4D) also applies in a case where—
- (a) an intervention notice ceases to be in force in accordance with subsection (4A); and
- (b) the CMA has, before the time at which the notice ceases to be in force—
- (i) decided that it should make an ordinary reference or a cross-market reference under section 131 in relation to the matter concerned; and
- (ii) given a document containing its decision, the reasons for it and such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for

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its decision to the Secretary of State in accordance with section 140A(3)(c).

(4D) In a case to which this subsection applies—

- (a) the CMA shall, as soon as reasonably practicable, make a reference in relation to the matter under section 131; and
- (b) the reference is to be treated for the purposes of this Part as having been made in accordance with the requirements imposed by this Part.”

(5) In subsection (5)—

(a) before paragraph (a) insert—

- “(za) the CMA accepts an undertaking under section 154 instead of making a reference under section 131 in relation to the matter;
- (zb) the CMA publishes notice that it has otherwise decided not to make a reference under section 131 in relation to the matter;
- (zc) the period permitted for the preparation by the CMA of the market study report in relation to the matter and for the report to be published under section 131B(4) or (as the case may be) given to the Secretary of State under section 140A(3) has expired and no such report has been so prepared or no such action has been taken;
- (zd) the Secretary of State makes a reference under section 140A(5) in relation to the matter;”

- (b) in paragraph (a), after “143(1) or (3)” insert “or (as the case may be) 143A(2) or (3)”,
- (c) in paragraph (c), after “143(1)” insert “or (as the case may be) 143A(2)”,
- (d) in paragraph (d), at the end insert “or (as the case may be) fails to make and publish a decision under subsection (2) of section 146A within the period required by subsection (6) of that section”,
- (e) in paragraph (e), at the end insert “or (as the case may be) decides under section 146A(2) to make no finding at all in relation to the matter”, and
- (f) in paragraph (f), after “147(2)” insert “or (as the case may be) 147A(2)”.

(6) In subsection (6)—

(a) before paragraph (a) insert—

- “(za) in a case falling within subsection (5)(za), the acceptance of the undertaking concerned;
- (zb) in a case falling within subsection (5)(zb), the publication of the notice concerned;”

(b) in paragraph (a), after “(5)” insert “(zc)”, and

(c) after paragraph (a) insert—

- “(aa) in a case falling within subsection (5)(zd), the making of the reference concerned;”.

(7) After subsection (6) insert—

“(6A) In subsection (6)(za) the reference to the acceptance of the undertaking concerned shall, in a case where the CMA has accepted a group of

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undertakings under section 154, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of subsections (5)(za) and (6)(za).”

(8) In subsection (7), after “147(2)” insert “or (as the case may be) 147A(2)”.

6 After section 140A (inserted by section 35) insert—

**“140B Variation of restricted PI references and full PI references**

**“140B “140B Variation of restricted PI references and full PI references**

(1) The Secretary of State may at any time vary a restricted PI reference or a full PI reference.

(2) The Secretary of State shall consult the CMA before varying any such reference.

(3) But subsection (2) does not apply if the CMA requested the variation concerned.

(4) No variation under this section is capable of altering the public interest consideration or considerations specified in the reference.”

7 (1) Section 141 (questions to be decided where section 139(1) intervention notice is in force) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies where the Secretary of State makes a restricted PI reference.”

(3) For the heading, substitute “Restricted PI references: questions to be decided by CMA”.

8 (1) Section 142 (investigations and reports) is amended as follows.

(2) In subsection (1)—

(a) for the words from the beginning to “the Commission” substitute “Where the Secretary of State makes a restricted PI reference or a full PI reference, the CMA”, and

(b) after “section 143(1) or (3)” insert “or (as the case may be) 143A(2) or (3)”.

(3) In subsection (2)—

(a) in paragraph (a), at the end insert “or (as the case may be) 141A”,

(b) omit the “and” after paragraph (b), and

(c) after paragraph (c) insert “; and

(d) in the case of a report in relation to a full PI reference in respect of which the Secretary of State appointed a public interest expert, a summary of the views of the expert.”

(4) After subsection (2) insert—

“(2A) A summary of the views of a public interest expert in a report under this section shall be approved by the expert before action is taken in relation to the report under section 143A(2) or (3).”

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- 9 (1) Section 143 (publication etc of reports) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies in relation to a report prepared under section 142 in respect of a restricted PI reference.”
- (3) In subsection (1), in the words before paragraph (a), for “a report under section 142” substitute “the report”.
- (4) Omit subsection (2).
- (5) In subsection (3), for “a report under section 142” substitute “the report”.
- (6) Omit subsections (5) to (8).
- (7) For the heading substitute “Restricted PI references: publication etc of reports of CMA”.

10 After section 143 insert—

**“143A Full PI references: publication etc of reports of CMA**

**“143A “143A Full PI references: publication etc of reports of CMA**

- (1) This section applies in relation to a report prepared under section 142 in respect of a full PI reference.
- (2) The CMA shall publish the report if it contains—
- (a) the decision of the CMA that there is no adverse effect on competition;
  - (b) the decision of the CMA that there is an adverse effect on competition but that the feature or combination of features which gave rise to it does not operate and may not be expected to operate against the public interest; or
  - (c) the decisions of the CMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest but, on the question mentioned in section 141A(5)(a), and in relation to each effect adverse to the public interest concerned, that no action should be taken by the Secretary of State.
- (3) The CMA shall give the report to the Secretary of State if it contains the decisions of the CMA—
- (a) that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest; and
  - (b) in relation to at least one effect adverse to the public interest concerned, that action should be taken by the Secretary of State.
- (4) The Secretary of State shall publish, no later than publication of the Secretary of State’s decision under section 146A(2) in relation to the case, a report of the CMA given to the Secretary of State under subsection (3) and not required to be published by virtue of section 148A(3).”

- 11 (1) Section 144 (time-limits for investigations and reports in public interest cases) is amended as follows.
- (2) In subsection (1)—
- (a) for “the date of the reference” substitute “the relevant date”, and
  - (b) for the words from “publish it” to the end substitute “publish it under section 143(1) or 143A(2) or (as the case may be) give it to the Secretary of State in accordance with section 143(3) or 143A(3).”
- (3) After subsection (1) insert—
- “(1A) For the purposes of subsection (1), the “relevant date” is—
- (a) in the case of a report in relation to a restricted PI reference or to a full PI reference which specifies that the Secretary of State does not propose to appoint a public interest expert, the date of the reference;
  - (b) in the case of a report in relation to a full PI reference which specifies that the Secretary of State proposes to appoint a public interest expert, the earliest of the following—
    - (i) the date of the appointment of the expert;
    - (ii) the date on which the Secretary of State gives notice to the CMA that the Secretary of State no longer intends to appoint such an expert;
    - (iii) the end of the period of 2 months beginning with the date of the reference.”
- (4) In subsection (4), after “143(1) or (3)” insert “or (as the case may be) 143A(2) or (3)”.
- 12 (1) Section 145 (restrictions where public interest considerations not finalised: Part 4) is amended as follows.
- (2) In subsection (2), after “143(3)” insert “or (as the case may be) 143A(3)”.
- (3) In subsection (3), after “141(3)” insert “or (as the case may be) 141A(4) and (5).”
- (4) In subsection (4), after “141(3)” insert “or (as the case may be) 141A(4) and (5).”
- 13 (1) Section 146 (decision of Secretary of State) is amended as follows.
- (2) In subsection (1), in the words before paragraph (a), for “report of the Commission” substitute “report of the CMA in relation to a restricted PI reference”.
- (3) In the heading, at the beginning, insert “Restricted PI references:”.
- 14 After section 146 insert—

**“146A Full PI references: decision of Secretary of State**

**“146A “146A Full PI references: decision of Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has received a report of the CMA in relation to a full PI reference which—
- (a) has been prepared under section 142;
  - (b) contains the decisions of the CMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features that gave rise to an adverse effect on competition operates or may be expected to operate

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- against the public interest and that, in relation to at least one effect adverse to the public interest concerned, action should be taken by the Secretary of State; and
- (c) has been given to the Secretary of State as required by section 143A(3).
- (2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the matter and whether to make no finding at all in the matter.
- (3) For the purposes of this Part, the Secretary of State makes an adverse public interest finding in relation to a matter if, in relation to that matter, the Secretary of State decides—
- (a) that there is an adverse effect on competition;
  - (b) that there is one or more than one admissible public interest consideration which is relevant to the matter; and
  - (c) taking account only of any adverse effect on competition and any relevant admissible public interest consideration or considerations, that any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.
- (4) The Secretary of State may make no finding at all in a matter only if the Secretary of State decides that there is no admissible public interest consideration which is relevant to a consideration of the matter concerned.
- (5) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept the decision of the CMA as to whether there is an adverse effect on competition in relation to the matter.
- (6) The Secretary of State shall make and publish the decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the CMA under section 142.
- (7) In this section “admissible public interest consideration” means a public interest consideration which—
- (a) was mentioned in the intervention notice concerned; and
  - (b) was not disregarded by the CMA for the purposes of its report under section 142.”
- 15 In section 147 (remedial action by Secretary of State), in the heading, at the beginning, insert “Restricted PI references:”.
- 16 After section 147 insert—

**“147A Full PI references: remedial action by Secretary of State**

**“147A “147A Full PI references: remedial action by Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has decided under subsection (2) of section 146A within the period required by subsection (6) of that section to make an adverse public interest finding in relation to a matter and has published the decision within the period so required.

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- (2) The Secretary of State may take such action under section 159 or 161 as the Secretary of State considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the features or combinations of features in question.
  - (3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to the report of the CMA under section 142.
  - (4) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to—
    - (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
    - (b) any detrimental effects on customers so far as resulting from those effects.”
- 17 (1) Section 148 (reversion of the matter) is amended as follows.
- (2) Omit subsections (3) to (5).
  - (3) For the heading substitute “Restricted PI references: reversion of the matter to CMA”.
- 18 After section 148 insert—

**“148A Full PI references: reversion of the matter to CMA**

**“148A “148A Full PI references: reversion of the matter to CMA**

- (1) This section applies if—
  - (a) the Secretary of State decides under section 146A(2) to make no finding at all in the matter; or
  - (b) the Secretary of State fails to make and publish the decision under subsection (2) of section 146A within the period required by subsection (6) of that section.
- (2) The CMA shall proceed under section 138 as if—
  - (a) a reference under section 131 had been made (in accordance with the requirements imposed by this Part) instead of a full PI reference; and
  - (b) its report had been prepared and published under section 136 within the period permitted by section 137.
- (3) The CMA shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (2).
- (4) In relation to proceedings by virtue of subsection (2), the reference in section 138(3) to decisions of the CMA included in its report by virtue of section 134(4) is to be construed as a reference to decisions which were included in the report of the CMA by virtue of section 141A(6).
- (5) Where the CMA becomes under a duty to proceed as mentioned in subsection (2), references in this Part to a reference under section 131, so far as necessary, are to be construed accordingly.

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- (6) Where the CMA, in proceeding by virtue of subsection (2), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141A(6), it shall not so proceed without the consent of the Secretary of State.
- (7) The Secretary of State shall not withhold consent under subsection (6) unless the Secretary of State believes that the proposed alternative way of proceeding will operate against the public interest.
- (8) For the purposes of subsection (7) a proposed alternative way of proceeding will operate against the public interest only if any admissible public interest consideration or considerations outweigh the considerations which have led the CMA to propose proceeding in that way.
- (9) In deciding whether to withhold consent under subsection (6), the Secretary of State shall accept the CMA's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.
- (10) In this section “admissible public interest consideration” has the same meaning as in section 146A.”
- 19 (1) Section 149 (intervention notices under section 139(2)) is amended as follows.
- (2) In subsection (1)(c), for “case” substitute “proposal to accept the undertaking”.
- (3) In subsection (2), for “case” (in the second place where it occurs) substitute “proposal to accept the undertaking”.
- 20 In section 150 (power of veto of Secretary of State: undertakings in lieu), before subsection (1) insert—
- “(A1) Where an intervention notice under subsection 139(1) is in force, the CMA shall not, without the consent of the Secretary of State, accept any proposed undertaking under section 154 in relation to the matter concerned.”
- 21 (1) Section 151 (further interaction of intervention notices with general procedure) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) Sections 134(1), (1A), (4), (6) and (7), 136(1) to (6), 137(1) to (6), 138 and 138A do not apply in relation to a restricted PI reference or a full PI reference.”
- (3) In subsection (2), for the words from “, the Commission” to the end substitute “at a time after the Secretary of State has made a restricted PI reference or a full PI reference, the CMA shall proceed as if the reference concerned had instead been made under section 131 (in accordance with the requirements imposed by this Part).”
- (4) In subsection (4), for the words from “, the Commission shall” to the end substitute “, the CMA shall proceed as if the restricted PI reference or (as the case may be) the full PI reference concerned had instead been made by the CMA under section 131 (in accordance with the requirements imposed by this Part).”



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- (5) For the heading, substitute “Public interest intervention cases: interaction with general procedure”.
- 22 In section 152 (certain duties in relation to providing information), omit subsection (2).
- 23 In section 155 (undertakings in lieu: procedural requirements), in subsection (3)(a), at the end insert “or (but for the effect of section 140A(3)) it would have had power to make and which it would otherwise have intended to make”.
- 24 (1) Section 157 (interim undertakings: Part 4) is amended as follows.
- (2) In subsection (1)(b), after “143(3)” insert “or (as the case may be) 143A(3)”.
- (3) In subsection (6)—
- (a) in the definition of “pre-emptive action”, for “or (as the case may be) 147(2)” substitute “, 147(2) or (as the case may be) 147A(2)”, and
- (b) for the definition of “relevant authority” substitute—
- “the relevant authority” means—
- (a) in the case of a restricted PI reference or a full PI reference, the Secretary of State;
- (b) in any other case, the CMA.”
- 25 In section 158 (interim orders: Part 4), in subsection (1)(b), after “143(3)” insert “or (as the case may be) 143A(3)”.
- 26 In section 159 (final undertakings: Part 4), in subsection (2), after “147” insert “or (as the case may be) 147A”.
- 27 (1) Section 160 (order-making power where final undertakings not fulfilled: Part 4) is amended as follows.
- (2) In subsection (2), for “or (as the case may be) 147(2)” substitute “, 147(2) or (as the case may be) 147A(2)”.
- (3) In subsection (3), for “or (as the case may be) 147” substitute “or 147 or (as the case may be) subsections (3) and (4) of section 147A”.
- 28 In section 161 (final orders: Part 4), in subsection (2), after “147” insert “or (as the case may be) 147A”.
- 29 In section 169 (certain duties of relevant authorities to consult: Part 4), in subsection (6)—
- (a) in the definition of “relevant authority”, at the end insert “or the Secretary of State”,
- (b) in the definition of “relevant decision”, in paragraph (b), after “appropriate Minister” (in the first place where it occurs) insert “(other than the Secretary of State acting alone)”, and
- (c) also in that definition, after paragraph (b) insert—
- “(ba) in the case of the Secretary of State, any decision by the Secretary of State—
- (i) to make a reference under section 132;
- (ii) to vary under section 135 such a reference;
- (iii) in a case where the Secretary of State is required to make a reference under section 140A, whether

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- to make a reference under subsection (5) or (6) of that section; or
- (iv) to vary under section 140B a reference made under section 140A(6).”
- 30 (1) Section 172 (further publicity requirements: Part 4) is amended as follows.
- (2) In subsection (1), in paragraph (a), after “section 131” insert “, other than a reference treated as so made by virtue of section 140A(5)(b)”.
- (3) In subsection (2), omit paragraph (d).
- (4) In subsection (3)—
- (a) after paragraph (d) insert—
- “(da) any reference made by him under section 140A(5) or (6);
- (db) any variation made by him under section 140B of a reference under section 140A(6);”, and
- (b) in paragraph (e), after “147(2)” insert “or (as the case may be) 147A(2)”.
- (5) In subsection (7), omit “or (2)(d)”.
- (6) In subsection (7A) (inserted by Schedule 12), at the end insert “or (3)(da)”.
- (7) In subsection (8), in paragraph (a), after “146(2)” insert “or 146A(2)”.
- (8) In subsection (10), after “147(2)” insert “or 147A(2)”.
- 31 In section 177 (excisions from reports: Part 4), in subsection (5), omit “, 143(2) and (5) to (7), 148(3) to (5)”.
- 32 (1) Section 183 (interpretation: Part 4) is amended as follows.
- (2) In subsection (3), in paragraph (a), for the words before sub-paragraph (i) substitute “where the reference is made under section 131 or 132—”.
- (3) In that subsection, in paragraph (b)—
- (a) for the words before sub-paragraph (i) substitute “where the reference is a restricted PI reference or a full PI reference—”,
- (b) in sub-paragraph (i), after “143(1) or (3)” insert “or (as the case may be) 143A(2) or (3)”,
- (c) in sub-paragraph (ii), omit “(disregarding the fact that the notice was given)”,
- (d) in sub-paragraph (iii), after “143(1)” insert “or (as the case may be) 143A(2)”,
- (e) in sub-paragraph (iv), omit “(disregarding the fact that the notice was given)”,
- (f) for sub-paragraph (v) substitute—
- “(v) the Secretary of State has failed to make and publish a decision under subsection (2) of section 146 within the period permitted by subsection (3) of that section or (as the case may be) under subsection (2) of section 146A within the period permitted by subsection (6) of that section and the reference is finally determined under paragraph (a) above;”,
- (g) in sub-paragraph (vi), omit “(disregarding the fact that the notice was given)”.

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- (h) after sub-paragraph (vi) insert—
    - “(via) the Secretary of State has made no finding at all under section 146A(2) and the reference is finally determined under paragraph (a) above;”,
  - (i) omit the “or” after sub-paragraph (vii),
  - (j) after sub-paragraph (vii) insert—
    - “(viiia) the Secretary of State has made an adverse public interest finding under section 146A(2) but has decided under section 147A(2) neither to accept an undertaking under section 159 nor to make an order under section 161;”, and
  - (k) after sub-paragraph (viii) insert “; or
    - (ix) the Secretary of State has made an adverse public interest finding under section 146A(2) and has accepted an undertaking under section 159 or made an order under section 161.”
- (4) In subsection (4)(c), after “(b)(viii)” insert “or (ix)”.
- (5) In subsection (5), for “or (vi)” substitute “, (vi) or (via)”.
- (6) In subsection (6), after “(b)(viii)” insert “and (ix)”.
- 33 (1) Section 184 (index of defined expressions in Part 4) is amended as follows.
- (2) After the entry in the table for “Adverse effect on competition” insert—
- |                                  |                   |
|----------------------------------|-------------------|
| “Adverse public interest finding | Section 146A(3)”. |
|----------------------------------|-------------------|
- (3) After the entry in the table for “Final determination of market investigation reference” insert—
- |                    |                    |
|--------------------|--------------------|
| “Full PI reference | Section 140A(12)”. |
|--------------------|--------------------|
- (4) After the entry in the table for “Public interest consideration being finalised” insert—
- |                         |                   |
|-------------------------|-------------------|
| “Public interest expert | Section 141B(4)”. |
|-------------------------|-------------------|
- (5) Before the entry in the table for “subordinate legislation” insert—
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|--------------------------|--------------------|
| “Restricted PI reference | Section 140A(12)”. |
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SCHEDULE 11

Section 36(8)

MARKETS: INVESTIGATION POWERS

*Enforcement of investigation powers*

- 1 After section 174 of the 2002 Act insert—

**“174A Enforcement of powers under section 174: general****“174A Enforcement of powers under section 174: general**

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 174, it may impose a penalty in accordance with section 174D.
- (2) The CMA may proceed (whether at the same time or at different times) under subsection (1) and section 138A(3) in relation to the same failure.
- (3) Where the CMA considers that a person has intentionally obstructed or delayed another person in the exercise of its powers under section 174(7), it may impose a penalty in accordance with section 174D.
- (4) A person commits an offence if the person intentionally alters, suppresses or destroys any document which the person has been required to produce by a notice under section 174.
- (5) But a person does not commit an offence under subsection (4) in relation to any act which constitutes a failure to comply with a notice under section 174 if the CMA has proceeded against the person under subsection (1) in relation to that failure.
- (6) A person who commits an offence under subsection (4) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (7) The CMA shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (4) if that person has been found guilty of that offence.
- (8) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 138A(3), the CMA shall have regard to the statement of policy which was most recently published under section 174E at the time the failure or (as the case may be) the obstruction or delay concerned occurred.
- (9) In this section—
  - (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and
  - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

**174B Restriction on powers to impose penalties under section 174A****174B Restriction on powers to impose penalties under section 174A**

- (1) No penalty shall be imposed by virtue of section 174A(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in

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question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.

- (2) In the following provisions of this section, “the section 174 power” means the power under section 174 to which the failure or (as the case may be) the obstruction or delay in question relates.
- (3) Where the section 174 power is exercised for the purpose mentioned in section 174(1)(a), the relevant day is the day when the CMA finally concludes the carrying out of its section 5 functions.
- (4) Where the section 174 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.
- (5) Except where subsection (3) or (4) applies, the relevant day is the day determined in accordance with the following provisions of this section.
- (6) Where the section 174 power is exercised for the purpose mentioned in section 174(1)(b) in connection with a matter that is the subject of a possible reference under section 131, the relevant day is the day when the CMA finally decides whether to make the reference.
- (7) Where the section 174 power is exercised for the purpose mentioned in section 174(1)(b) in connection with a matter that is the subject of a reference under section 131 or 132, the relevant day is the day when the reference is finally determined (see section 183).
- (8) Where the section 174 power is exercised for the purpose mentioned in section 174(1)(c) in connection with a matter that is the subject of a possible reference under section 140A(5) or (6), the relevant day is the day when the Secretary of State makes the reference.
- (9) Where the section 174 power is exercised for the purpose mentioned in section 174(1)(c) in connection with a matter that is the subject of a reference under section 140A(6), the relevant day is the day when the reference is finally determined (see section 183).

#### **174C Section 174B: supplementary provision**

##### **174C Section 174B: supplementary provision**

- (1) For the purpose of section 174B(3), the CMA finally concludes the carrying out of its section 5 functions if—
  - (a) the CMA publishes the market study report under section 131B(4) or (as the case may be) gives it to the Secretary of State under section 140A(3)(b); or
  - (b) the period permitted for the preparation by the CMA of the market study report and for the report to be published under section 131B(4) or (as the case may be) given to the Secretary of State under section 140A(3)(b) expires and no such report has been so prepared or no such action has been taken.
- (2) For the purpose of section 174B(3), the time when the CMA finally concludes the carrying out of its section 5 functions is—

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- (a) in a case falling within subsection (1)(a), the publication of the report or (as the case may be) the giving of it to the Secretary of State;
  - (b) in a case falling within subsection (1)(b), the expiry of the period concerned.
- (3) For the purpose of section 174B(6), the CMA finally decides whether to make a reference under section 131 if—
- (a) the CMA makes such a reference;
  - (b) the CMA accepts an undertaking under section 154 instead of making such a reference;
  - (c) the CMA publishes notice that it has otherwise decided not to make such a reference; or
  - (d) the period permitted for the preparation by the CMA of a market study report in relation to the matter and for the report to be published under section 131B(4) has expired and no such report has been so prepared or published.
- (4) For the purpose of section 174B(6), the time when the CMA finally decides whether to make a reference under section 131 is—
- (a) in a case falling within subsection (3)(a), the making of the reference;
  - (b) in a case falling within subsection (3)(b), the acceptance of the undertaking concerned;
  - (c) in a case falling within subsection (3)(c), the publication of the notice concerned;
  - (d) in a case falling within subsection (3)(d), the expiry of the period concerned.
- (5) In subsection (4)(b) the reference to the acceptance of the undertaking concerned shall, in a case where the CMA has accepted a group of undertakings under section 154, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of subsections (3)(b) and (4)(b).

## **174D Penalties**

### **174D Penalties**

- (1) A penalty imposed under section 174A(1) or (3) shall be of such amount as the CMA considers appropriate.
- (2) In the case of a penalty imposed under section 174A(1), the amount may be—
- (a) a fixed amount;
  - (b) an amount calculated by reference to a daily rate; or
  - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) In the case of a penalty imposed under section 174A(3), the amount shall be a fixed amount.
- (4) A penalty imposed under section 174A(1) shall not—

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- (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
  - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify; and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (5) A penalty imposed under section 174A(3) shall not exceed such amount as the Secretary of State may by order specify.
- (6) An order under subsection (4) or (5) shall not specify—
  - (a) in the case of a fixed amount, an amount exceeding £30,000;
  - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
  - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (7) Before making an order under subsection (4) or (5), the Secretary of State shall consult—
  - (a) the CMA; and
  - (b) such other persons as the Secretary of State considers appropriate.
- (8) In imposing a penalty by reference to a daily rate—
  - (a) no account is to be taken of any days before the service on the person concerned of notice of the penalty under section 112 (as applied by subsection (10)); and
  - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (9).
- (9) Those days are—
  - (a) the day on which the requirement of the notice concerned under section 174 is satisfied;
  - (b) the day which is the relevant day in the case in question for the purposes of section 174B.
- (10) Sections 112 to 115 apply in relation to a penalty imposed under section 174A(1) or (3) as they apply in relation to a penalty imposed under section 110(1) or (3).

## **174E Statement of policy on penalties**

### **174E Statement of policy on penalties**

- (1) The CMA shall prepare and publish a statement of policy in relation to the enforcement of notices given under section 174.
- (2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 174A(1) or (3).

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(3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.

(4) The CMA shall consult such persons as it considers appropriate when preparing or revising its statement of policy.”

*Investigation powers: miscellaneous consequential amendments*

2 Part 4 of the 2002 Act (market investigations) is amended as follows.

3 Omit section 175 (enforcement of powers under section 174: offences).

4 Omit section 176 (investigation powers of the Commission).

5 In section 179 (review of decisions under Part 4), in subsection (2)(a), for “section 110(1) or (3) as applied by section 176” substitute “section 174A(1) or (3)”.

6 (1) Section 181 (orders under Part 4) is amended as follows.

(2) In subsection (4), for the words from “or 161,” to “section 176” substitute “, 161, 174D(4) or (5), or under section 114(3)(b) or (4)(b) as applied by section 174D”.

(3) In subsection (10)—

(a) omit “111(4) or (6) or”, and

(b) for “176” substitute “174D”.

SCHEDULE 12

Section 38

MARKETS: TIME-LIMITS

*Market studies and decisions whether to make a reference under section 131*

1 Before section 131 of the 2002 Act (power to make market investigation references) insert—

*“Market studies*

**130A Duty to publish market study notice**

**130A Duty to publish market study notice**

(1) Where the CMA is proposing to carry out its functions under section 5 in relation to a matter for the purposes mentioned in subsection (2), the CMA must publish a notice under this section (referred to in this Part as a “market study notice”).

(2) The purposes are—

(a) to consider the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the United Kingdom has or may have effects adverse to the interests of consumers; and

(b) to assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.



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- (3) A market study notice shall, in particular, specify—
  - (a) the matter in relation to which the CMA is proposing to carry out its functions under section 5;
  - (b) the period during which representations may be made to the CMA in relation to the matter; and
  - (c) the dates by which the CMA is required to comply with the requirements imposed on it by sections 131A and 131B.”

2 After section 131 of that Act insert—

**“131A Decisions about references under section 131: consultation**

**“131A Decisions about references under section 131: consultation**

- (1) This section applies to a case where the CMA has published a market study notice and—
  - (a) the CMA is proposing to make a reference under section 131 in relation to the matter specified in the notice; or
  - (b) a representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that such a reference should be made but the CMA is proposing not to make such a reference.
- (2) The CMA shall—
  - (a) publish notice of the proposal concerned; and
  - (b) consult the relevant persons about the proposal, in such manner as it considers practicable, before deciding whether to make a reference.
- (3) The CMA may, for the purposes of subsection (1), ignore any representation which it considers to be frivolous or vexatious.
- (4) For the purposes of subsection (2), a person is a “relevant person” if the CMA considers that its decision whether to make a reference is likely to have a substantial impact on the person’s interests.
- (5) In consulting a person for the purposes of this section, the CMA shall, so far as practicable, give its reasons for the proposal.
- (6) In considering what is practicable for the purposes of this section, the CMA shall, in particular, have regard to—
  - (a) the restrictions imposed by the time-table for making the decision (see section 131B); and
  - (b) any need to keep what is proposed, or the reasons for it, confidential.

**131B Market studies and the making of decisions to refer: time-limits**

**131B Market studies and the making of decisions to refer: time-limits**

- (1) Where the CMA has published a market study notice in a case to which section 131A applies, the CMA shall, within the period of 6 months beginning with the date on which it publishes the notice—
  - (a) publish the notice under section 131A(2)(a); and

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- (b) begin the process of consultation under section 131A(2)(b) (but the CMA need not complete the process within that period).
- (2) Subsection (3) applies where—
  - (a) the CMA has published a market study notice;
  - (b) no representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that a reference under section 131 should be made in relation to the matter specified in the notice; and
  - (c) the CMA has decided not to make such a reference.
- (3) The CMA shall, within the period of 6 months beginning with the date on which it publishes the market study notice, publish notice of the decision not to make a reference.
- (4) Where the CMA has published a market study notice it shall, within the period of 12 months beginning with the date on which it publishes the notice, prepare and publish a report (referred to in this Part as a “market study report”) which sets out—
  - (a) the findings of the CMA in relation to the matter specified in the notice; and
  - (b) the action (if any) which the CMA proposes to take in relation to the matter.
- (5) In a case to which section 131A applies, the market study report shall, in particular, contain—
  - (a) the decision of the CMA to make a reference under section 131 in relation to the matter specified in the market study notice, the decision to accept an undertaking under section 154 instead of making such a reference or (as the case may be) the decision otherwise not to make such a reference;
  - (b) the CMA’s reasons for the decision; and
  - (c) such information as the CMA considers appropriate for facilitating a proper understanding of its reasons for the decision.
- (6) Where a market study report contains a decision of the CMA to make a reference under section 131 in relation to a matter, the CMA shall, at the same time as it publishes the report, make the reference.
- (7) This section is subject to section 140A (duty of Secretary of State to refer in public interest intervention cases).

### **131C Time-limits under section 131B: supplementary**

#### **131C Time-limits under section 131B: supplementary**

- (1) The Secretary of State may by order amend section 131B so as to alter one or more of the following periods—
  - (a) the period of 6 months mentioned in subsection (1) or (3) or any period for the time being mentioned in either of those subsections in substitution for that period;
  - (b) the period of 12 months mentioned in subsection (4) or any period for the time being there mentioned in substitution for that period.

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- (2) But no alteration may be made by virtue of subsection (1) which results in—
  - (a) the period for the time being mentioned in subsection (1) or (3) exceeding 6 months; or
  - (b) the period for the time being mentioned in subsection (4) exceeding 12 months.
- (3) Before making an order under this section the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

#### *Market investigations and reports*

- 3 (1) Section 137 of the 2002 Act (time-limits for market investigations and reports) is amended as follows.
  - (2) In subsection (1), for “two years” substitute “18 months”.
  - (3) After subsection (2) insert—
    - “(2A) The CMA may extend, by no more than 6 months, the period within which its report under section 136 is to be prepared and published if it considers that there are special reasons for doing so.
    - (2B) An extension under subsection (2A) shall come into force when published under section 172.
    - (2C) No more than one extension is possible under subsection (2A).”
  - (4) For subsection (3) substitute—
    - “(3) The Secretary of State may by order amend this section so as to alter one or more of the following periods—
      - (a) the period of 18 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
      - (b) the period of 6 months mentioned in subsection (2A) or any period for the time being there mentioned in substitution for that period.”
  - (5) For subsection (4) substitute—
    - “(4) But no alteration shall be made by virtue of subsection (3) which results in—
      - (a) the period for the time being mentioned in subsection (1) exceeding 18 months; or
      - (b) the period for the time being mentioned in subsection (2A) exceeding 6 months.”

#### *Remedies implementation*

- 4 In section 138 of the 2002 Act (duty to remedy adverse effects), in subsection (2), after “shall,” insert “within the period permitted by section 138A,”.
- 5 After section 138 of that Act insert—

**“138A Time-limits for discharging duty under section 138****“138A Time-limits for discharging duty under section 138**

- (1) The CMA shall discharge its duty under section 138(2) within the period of 6 months beginning with the date on which it publishes the report concerned under section 136.
- (2) The CMA may extend, by no more than 4 months, the period within which its duty under section 138(2) is required to be discharged if it considers that there are special reasons for doing so.
- (3) The CMA may extend the period within which its duty under section 138(2) is required to be discharged if it considers that—
  - (a) a person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 174 which was given in relation to the reference; and
  - (b) the failure is preventing the CMA from properly discharging its duty under section 138(2).
- (4) An extension under subsection (2) or (3) shall come into force when published under section 172.
- (5) An extension under subsection (3) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.

**138B Section 138A: supplementary****138B Section 138A: supplementary**

- (1) A period extended under section 138A(2) may also be extended under section 138A(3), and a period extended under section 138A(3) may also be extended under section 138A(2).
- (2) No more than one extension is possible under section 138A(2).
- (3) Where a period is extended or further extended under section 138A(2) or (3), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period within which the CMA shall discharge its duty under section 138(2) is further extended;
  - (b) the further extension and at least one previous extension is made under section 138A(3); and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

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- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) shall be disregarded.
- (6) The Secretary of State may by order amend section 138A so as to alter one or more of the following periods—
  - (a) the period of 6 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
  - (b) the period of 4 months mentioned in subsection (2) or any period for the time being there mentioned in substitution for that period.
- (7) But no alteration shall be made by virtue of subsection (6) which results in—
  - (a) the period for the time being mentioned in section 138A(1) exceeding 6 months; or
  - (b) the period for the time being mentioned in section 138A(2) exceeding 4 months.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

*Time-limits: public interest intervention cases*

- 6 (1) Section 144 of the 2002 Act (time-limits for investigations and reports in public interest intervention cases) is amended as follows.
  - (2) In subsection (1), for “two years” substitute “18 months”.
  - (3) After subsection (1A) (inserted by Schedule 10) insert—
    - “(1B) The CMA may extend, by no more than 6 months, the period within which its report under section 142 is to be prepared and action is to be taken in relation to it under section 143(1) or (3) or (as the case may be) 143A(2) or (3) if it considers that there are special reasons for doing so.
    - (1C) An extension under subsection (1B) shall come into force when published under section 172.
    - (1D) No more than one extension is possible under subsection (1B).”
  - (4) In subsection (2)—
    - (a) after “amend” insert “—
      - (a)”,
    - (b) for “two years” substitute “18 months”, and
    - (c) at the end insert “;
      - (b) subsection (1B) so as to alter the period of 6 months mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.”
  - (5) In subsection (3)—
    - (a) after “results in” insert “—
      - (a)”,
    - (b) for “two years” substitute “18 months”, and

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- (c) at the end insert “;or
  - (b) the period for the time being mentioned in subsection (1B) exceeding 6 months.”

*Time-limits: consequential and other minor amendments*

- 7 Part 4 of the 2002 Act (market investigations) is amended as follows.
- 8 In the heading of that Part, at the beginning insert “Market Studies and”.
- 9 In the heading of Chapter 1, at the beginning insert “Market Studies and”.
- 10 (1) Section 132 (ministerial power to make references) is amended as follows.
- (2) In subsection (1)—
- (a) after “services” insert “—
    - (a)”,
    - and
  - (b) at the end insert “; and
    - (b) in a case in which the CMA has published a market study notice under section 130A, the period permitted by section 131B for the preparation and publication by the CMA of the market study report has expired.”
- (3) In subsection (2)(b), for “to make such a reference” substitute “to publish a market study notice in relation to the matter concerned”.
- 11 In section 135 (variation of references), omit subsection (4).
- 12 In section 156 (effect of undertakings under section 154), after subsection (2) insert—
- “(3) The expiry of the period mentioned in section 131B(4) does not prevent the making of a market investigation reference if the CMA has accepted an undertaking or group of undertakings under section 154 and—
- (a) the CMA considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
  - (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the OFT which was false or misleading in a material respect.”
- 13 In section 169 (certain duties of relevant authorities to consult: Part 4), in subsection (6), in the definition of “relevant decision”—
- (a) in paragraph (a), for sub-paragraph (i) substitute—
    - “(i) to make a reference under section 131 in a case where the CMA has not published a market study notice under section 130A in relation to the matter concerned;
    - (ia) as to whether to accept undertakings under section 154 instead of making any reference under section 131;”, and
  - (b) in paragraph (b)(i), omit “as to whether”.
- 14 (1) Section 172 (further publicity requirements: Part 4) is amended as follows.
- (2) In subsection (1), after paragraph (a) insert—

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- “(aa) any decision not to make a reference under section 131 following a consultation in relation to the matter concerned under section 169;”.
- (3) In subsection (2)—
- (a) before paragraph (a) insert—
- “(za) any extension by it under section 137 of the period within which a report under section 136 is to be prepared and published;
- (zb) any extension by it under section 138A of the period within which its duty under section 138(2) is to be discharged;”,
- and
- (b) after paragraph (b) insert—
- “(ba) any extension by it under section 144 of the period within which a report under section 142 is to be prepared and action is to be taken in relation to it;”.
- (4) After subsection (7) insert—
- “(7A) Subsection (6) shall not apply in relation to any case falling within subsection (1)(a).”
- 15 In section 179 (review of decisions under Part 4), in subsection (2), before paragraph (a) insert—
- “(za) does not include a decision whether to carry out functions under section 5 in a case where the CMA is, or would have been, required to publish a market study notice (see section 130A(1));”.
- 16 (1) Section 181 (orders under Part 4) is amended as follows.
- (2) In subsection (3), for “136(9), 137(3)” substitute “131C(1), 136(9), 137(3), 138B(6)”.
- (3) In subsection (4), for “137(3)” substitute “131C(1), 137(3), 138B(6)”.
- 17 In section 184 (index of defined expressions in Part 4), after the entry in the table for “market investigation reference” insert—
- |                      |                  |
|----------------------|------------------|
| “Market study notice | Section 130A(1)  |
| “Market study report | Section 131B(4)” |

SCHEDULE 13

Section 41

EXTENSION OF POWERS TO ISSUE WARRANTS UNDER THE 1998 ACT TO CAT

- 1 The 1998 Act is amended as follows.
- 2 (1) Section 28 (power to enter business premises under a warrant) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—”.

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- (3) In subsection (3), for “the judge” substitute “the court or (as the case may be) the Tribunal”.
- (4) After subsection (7) insert—
- “(7A) An application for a warrant under this section must be made—
- (a) in the case of an application to the court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”
- 3 (1) Section 28A (power to enter domestic premises under a warrant) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—”.
- (3) In subsection (3), for “the judge” substitute “the court or (as the case may be) the Tribunal”.
- (4) After subsection (8) insert—
- “(8A) An application for a warrant under this section must be made—
- (a) in the case of an application to the court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”
- 4 In section 61 (interpretation of Part 2), after the definition of “the Treaty” insert—
- ““the Tribunal” means the Competition Appeal Tribunal;”
- “Tribunal rules” means rules under section 15 of the Enterprise Act 2002.””.
- 5 (1) Section 62 (power to enter business premises under a warrant: Article 20 inspections) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—”.
- (3) After subsection (8) insert—
- “(8A) An application for a warrant under this section must be made—
- (a) in the case of an application to the High Court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”
- 6 (1) Section 62A (power to enter non-business premises under a warrant: Article 21 inspections) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—”.



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- (3) After subsection (10) insert—
- “(10A) An application for a warrant under this section must be made—
- (a) in the case of an application to the High Court, in accordance with rules of court;
  - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”
- 7 (1) Section 63 (power to enter business premises under a warrant: Article 22(2) inspections) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—”.
- (3) After subsection (8) insert—
- “(8A) An application for a warrant under this section must be made—
- (a) in the case of an application to the High Court, in accordance with rules of court;
  - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”
- 8 In section 65C (interpretation of Part 2A), in subsection (2), after the entry for “the Treaty” (but before the “and” following it) insert—
- ““the Tribunal;”  
“Tribunal rules;””.
- 9 (1) Section 65G (power to enter business premises under a warrant: Article 22(1) investigations) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—”.
- (3) In subsection (3), for “the judge” substitute “the court or (as the case may be) the Tribunal”.
- (4) After subsection (8) insert—
- “(8A) An application for a warrant under this section must be made—
- (a) in the case of an application to the court, in accordance with rules of court;
  - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”
- 10 (1) Section 65H (power to enter domestic premises under a warrant: Article 22(1) investigations) is amended as follows.
- (2) In subsection (1), for the words before paragraph (a) substitute “On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—”.
- (3) In subsection (3), for “the judge” substitute “the court or (as the case may be) the Tribunal”.

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(4) After subsection (8) insert—

“(8A) An application for a warrant under this section must be made—

- (a) in the case of an application to the court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.”

## SCHEDULE 14

Section 51(5)

### REGULATORS: USE OF POWERS UNDER THE 1998 ACT

#### *Gas Act 1986 (c. 44)*

1 The Gas Act 1986 is amended as follows.

2 (1) Section 28 (orders for securing compliance) is amended as follows.

(2) In subsections (1), (2) and (4), for “(5) and” (in each place where it occurs) substitute “(4A) to”.

(3) After subsection (4) insert—

“(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

(4) In subsection (5), omit paragraph (c) and the “or” preceding it.

(5) In subsection (6)—

- (a) in the words before paragraph (a), after “the Authority” insert “decides that it would be more appropriate to proceed under the Competition Act 1998 or”, and
- (b) in paragraph (a), after “that it” insert “has so decided or”.

3 In section 30A (penalties), for subsection (2) substitute—

“(2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

#### *Electricity Act 1989 (c. 29)*

4 The Electricity Act 1989 is amended as follows.

5 (1) Section 25 (orders for securing compliance) is amended as follows.

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- (2) In subsections (1), (2) and (4), for “(5) and” (in each place where it occurs) substitute “(4A) to”.
- (3) After subsection (4) insert—
- “(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- (4) In subsection (5), omit paragraph (d) and the “or” preceding it.
- (5) In subsection (6)—
- (a) in the words before paragraph (a), after “the Authority” insert “decides that it would be more appropriate to proceed under the Competition Act 1998 or”, and
- (b) in paragraph (a), after “that it” insert “has so decided or”.
- 6 In section 27A (penalties), for subsection (2) substitute—
- “(2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- 7 In section 43 (functions with respect to competition), in subsection (6), for the words from the beginning to “(3) above” substitute “If any question arises as to whether subsection (2) or (3) above applies to any particular case”.

#### *Water Industry Act 1991 (c. 56)*

- 8 The Water Industry Act 1991 is amended as follows.
- 9 (1) Section 19 (exception to duty to enforce) is amended as follows.
- (2) For subsection (1A) substitute—
- “(1A) Before making an enforcement order or confirming a provisional enforcement order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- (3) In subsection (3)—
- (a) in the words before paragraph (a), for “is satisfied as mentioned in subsection (1A) above” substitute “has decided that it would be more appropriate to proceed under the Competition Act 1998”, and
- (b) in paragraph (a), after “satisfied” insert “or has so decided”.

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*Status: This is the original version (as it was originally enacted).*

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- 10 In section 22A (penalties), for subsection (13) substitute—
- “(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

*Railways Act 1993 (c. 43)*

- 11 The Railways Act 1993 is amended as follows.
- 12 (1) Section 55 (orders for securing compliance) is amended as follows.
- (2) For subsection (5A) substitute—
- “(5A) Before making a final order or making or confirming a provisional order, the Office of Rail Regulation shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (5AA) The Office of Rail Regulation shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- (3) In subsection (5D)(b), for “(5A)” substitute “(5AA)”.
- 13 In section 57A (penalties), for subsection (6) substitute—
- “(6) Before imposing a penalty under this section, the Office of Rail Regulation shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (7) The Office of Rail Regulation shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.”
- 14 In section 67 (functions of the Office of Rail Regulation with respect to competition), in subsection (8), for the words from the beginning to “(3) above” substitute “If any question arises as to whether subsection (2) or (3) above applies to any particular case”.

*Transport Act 2000 (c. 38)*

- 15 (1) Section 21 of the Transport Act 2000 (exceptions to duties to secure compliance) is amended as follows.
- (2) In subsection (1), omit paragraph (b) and the “or” preceding it.
- (3) After subsection (5) insert—
- “(6) Before making a final order or making or confirming a provisional order, the CAA must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (7) The CAA must not make a final order or make or confirm a provisional order to the extent that it considers that it would be more appropriate to proceed under the Competition Act 1998.”

*Communications Act 2003 (c. 21)*

- 16 The Communications Act 2003 is amended as follows.
- 17 In section 94 (notification of contravention of SMP apparatus conditions), for subsection (10) substitute—
- “(10) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (10A) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.
- (10B) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.”
- 18 In section 96A (notification of contravention of condition other than SMP apparatus condition), for subsection (5) substitute—
- “(5) Before giving a notification under this section, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (6) OFCOM must not give a notification under this section if they consider that it would be more appropriate to proceed under the Competition Act 1998.
- (7) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.”

*Postal Services Act 2011 (c. 5)*

- 19 In Schedule 7 to the Postal Services Act 2011 (enforcement of regulatory requirements) for paragraph 4 substitute—
- “4 (1) Before giving a notification under paragraph 2, OFCOM must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2) OFCOM must not give a notification under paragraph 2 if they consider that it would be more appropriate to proceed under the Competition Act 1998.
- (3) In a case where OFCOM decide that it would be more appropriate to proceed under the Competition Act 1998, they must publish a statement to that effect in such manner as they consider appropriate for bringing their decision to the attention of persons whom they consider are likely to be affected by it.”

*Health and Social Care Act 2012 (c. 7)*

- 20 The Health and Social Care Act 2012 is amended as follows.
- 21 In section 105 (discretionary requirements), after subsection (3) insert—

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“(3A) Before imposing a discretionary requirement on a person mentioned in subsection (1)(b), Monitor must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(3B) Monitor must not impose a discretionary requirement on such a person if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

22 In section 106 (enforcement undertakings), after subsection (3) insert—

“(3A) Before accepting an enforcement undertaking from a person mentioned in subsection (1)(b), Monitor must consider whether it would be more appropriate to proceed under the Competition Act 1998.

(3B) Monitor must not accept an enforcement undertaking from such a person if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

*The Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))*

23 In article 46 of the Electricity (Northern Ireland) Order 1992, in paragraph (6), for the words from the beginning to “(2A) or (3)” substitute “If any question arises as to whether paragraph (2) or (3) applies to any particular case”.

*The Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6))*

24 The Energy (Northern Ireland) Order 2003 is amended as follows.

25 (1) Article 42 (orders for securing compliance) is amended as follows.

(2) In paragraph (1), for “, (5) and” substitute “and (5) to”.

(3) In paragraphs (2) and (4), for “(5) and” substitute “(5) to”.

(4) In paragraph (5), omit sub-paragraph (b) and the “or” preceding it.

(5) After that paragraph insert—

“(5A) Before making a final order or making or confirming a provisional order in relation to a licence holder, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(5B) The Authority shall not make a final order or make or confirm a provisional order in relation to a licence holder if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

(6) In paragraph (7)—

(a) in the words before sub-paragraph (a), after “(6)” insert “or decides that it would be more appropriate to proceed under the Competition Act 1998”, and

(b) in sub-paragraph (a), after “satisfied” insert “or has so decided”.

26 In article 45 (financial penalties), for paragraph (3) substitute—

“(3) Before imposing a penalty under paragraph (1) or (2) the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

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- (3A) The Authority shall not impose a penalty under paragraph (1) or (2) if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

*The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))*

27 The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

28 (1) Article 31 (exceptions to duty to enforce) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (d) and the “or” preceding it.

(3) After that paragraph insert—

“(1A) Before making an enforcement order or confirming a provisional enforcement order under Article 30, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order under that Article if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

(4) In paragraph (3)—

(a) in the words before sub-paragraph (a)—

(i) for “, (c) or (d)” substitute “or (c)”, and

(ii) after “paragraph (1)” insert “or decides that it would be more appropriate to proceed under the Competition Act 1998”, and

(b) in sub-paragraph (a), after “so satisfied” insert “or has so decided”.

29 In article 35 (financial penalties), for paragraph (11) substitute—

“(11) Before imposing a penalty under this Article the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(12) The Authority shall not impose a penalty under this Article if it considers that it would be more appropriate to proceed under the Competition Act 1998.”

SCHEDULE 15

Section 57

MINOR AND CONSEQUENTIAL AMENDMENTS: PART 4

*Civil Aviation Act 1982 (c. 16)*

1 In Schedule 1 to the Civil Aviation Act 1982 (constitution etc. of the Authority), in paragraph 15—

(a) the existing text becomes sub-paragraph (1), and

(b) after that sub-paragraph insert—

“(2) The power in sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of

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paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

#### *Gas Act 1986 (c. 44)*

- 2 In section 36A of the Gas Act 1986 (functions with respect to competition), in subsections (3), (3A) and (7)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

#### *Electricity Act 1989 (c. 29)*

- 3 In section 43 of the Electricity Act 1989 (functions with respect to competition), in subsections (3), (3A) and (6)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

#### *Water Industry Act 1991 (c. 56)*

- 4 The Water Industry Act 1991 is amended as follows.
- 5 In section 31 (functions with respect to competition), in subsections (3), (4A) and (8)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.
- 6 In Schedule 1A (constitution etc. of the Authority), in paragraph 10, after sub-paragraph (2) insert—
- “(3) Sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

#### *Railways Act 1993 (c. 43)*

- 7 In section 67 of the Railways Act 1993 (functions with respect to competition), in subsections (3), (3A) and (8)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

#### *Competition Act 1998 (c. 41)*

- 8 The Competition Act 1998 is amended as follows.
- 9 In section 26 (powers when conducting investigations), in subsection (3)(b), for “42 to” substitute “43 and”.
- 10 In section 38 (guidance on level of penalties), in subsection (9), for “an appeal tribunal” substitute “the Tribunal”.
- 11 In section 54 (regulators), in subsection (1)—
- (a) omit paragraph (c), and
- (b) for paragraph (f) substitute—
- “(f) the Northern Ireland Authority for Utility Regulation;”.
- 12 (1) Schedule 1 (exclusions: mergers and concentrations) is amended as follows.
- (2) In paragraph 5—
- (a) omit “to the Competition Commission” (in each place where it occurs), and
- (b) for “the Commission” (in each place where it occurs) substitute “the CMA”.



### *Utilities Act 2000 (c. 27)*

- 13 In Schedule 1 to the Utilities Act 2000 (constitution etc. of the Authority), in paragraph 9, after sub-paragraph (2) insert—
- “(2A) Sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

### *Transport Act 2000 (c. 38)*

- 14 In section 86 of the Transport Act 2000 (functions with respect to competition), in subsections (3), (4)(b) and (7)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

### *Enterprise Act 2002 (c. 40)*

- 15 The Enterprise Act 2002 is amended as follows.
- 16 (1) Section 25 (extension of time-limits) is amended as follows.
- (2) In subsection (2), for the words from “has failed” to the end of the subsection substitute “has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 109”.
- (3) For subsection (3) substitute—
- “(3) An extension under subsection (2) shall come into force when notice of the extension is given and end—
- (a) when the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
- (b) if earlier, the CMA cancels the extension.”
- 17 Omit section 31 (information powers in relation to completed mergers).
- 18 (1) Section 32 (supplementary provision for purposes of sections 25 and 31) is amended as follows.
- (2) Omit subsections (1) to (3).
- (3) In subsection (4), omit “or subsection (3)(a) above”.
- (4) In the heading, for “sections 25 and 31” substitute “section 25”.
- 19 (1) Section 34A (duty where case referred by European Commission) is amended as follows.
- (2) For subsection (5) substitute—
- “(5) The CMA may extend the preliminary assessment period if it considers that any of the persons carrying on the enterprises concerned has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 109.”
- (3) For subsection (6) substitute—
- “(6) An extension under subsection (5) shall come into force when published under section 107.”

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- (6A) An extension under subsection (5) shall continue in force until—
- (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.”
- (4) Omit subsection (7).
- 20 Omit section 34B (power to request information in referred cases).
- 21 (1) Section 42 (intervention by Secretary of State in certain public interest cases) is amended as follows.
- (2) In subsection (1), in paragraph (d)(i)—
    - (a) for “section 22(3)(a) or (e)” substitute “section 22(3)(za), (a) or (e)”, and
    - (b) for “33(3)(a) or (e)” substitute “33(3)(za), (a) or (e)”.
  - (3) In subsection (5), for “to 32” substitute “to 30”.
  - (4) In subsection (6), in the words before paragraph (a), for “to 32” substitute “to 30”.
  - (5) In that subsection, in paragraph (b), for “sections 25(1) to (3), (6) and (8) and 31” substitute “section 25(1) to (3), (6) and (8)”.
  - (6) In that subsection, in paragraph (h)—
    - (a) omit “, and the power to request information under section 31(1) as so applied,”, and
    - (b) after “existing time-limits” insert “by virtue of section 24 (as so applied)”.
  - (7) In that subsection, in paragraph (i), after “existing time-limits” insert “by virtue of section 24 (as so applied)”.
  - (8) In that subsection, omit paragraph (j).
  - (9) In that subsection, in paragraph (k), for “to 32” substitute “to 30”.
  - (10) In that subsection, omit paragraph (l) and the word “and” immediately preceding it.
- 22 In section 46 (references under section 45: supplementary), in subsection (1)(a), omit “or 96(3)”.
- 23 (1) Section 46B (extension of preliminary assessment period) is amended as follows.
- (2) For subsection (1) substitute—
 

“(1) The CMA may extend the preliminary assessment period for the purposes of section 46A if it considers that any of the persons carrying on the enterprises concerned has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 109.”
  - (3) Omit subsection (2).
  - (4) For subsection (3) substitute—
 

“(3) An extension under subsection (1) shall come into force when published under section 107.

(3A) An extension under subsection (1) shall continue in force until—

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- (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.”
- (5) Omit subsection (4).
- 24 Omit section 46C (power to request information in referred cases).
- 25 (1) Section 49 (variation of references under section 45) is amended as follows.
  - (2) In subsection (2), omit “1.”.
  - (3) In subsection (3), omit “1.”.
  - (4) In subsection (4) —
    - (a) omit “any undertaking accepted under paragraph 1 of Schedule 7, or”, and
    - (b) for “that Schedule” substitute “Schedule 7”.
  - (5) In subsection (5)—
    - (a) omit “undertaking or” (in each place where it occurs),
    - (b) omit “, accepted or” (in each place where it occurs), and
    - (c) omit “, superseded, released”.
- 26 (1) Section 59 (intervention by Secretary of State in special public interest cases) is amended as follows.
  - (2) In subsection (5), for “to 32” substitute “to 30”.
  - (3) In subsection (6), in the words before paragraph (a), for “to 32” substitute “to 30”.
  - (4) In that subsection, in paragraph (c), for “sections 25(1) to (3), (6) and (8) and 31” substitute “section 25(1) to (3), (6) and (8)”.
  - (5) In that subsection, in paragraph (g), omit “, and the power to request information under section 31(1) as so applied.”.
  - (6) In that subsection, omit paragraph (h).
  - (7) In that subsection, in paragraph (i), for “to 32” substitute “to 30”.
  - (8) In that subsection, omit paragraph (j) and the word “and” immediately preceding it.
- 27 (1) Section 64 (cancellation and variation of references under section 62) is amended as follows.
  - (2) In subsection (3), omit “1.”.
  - (3) In subsection (4)—
    - (a) omit “any undertaking accepted under paragraph 1 of Schedule 7, or”, and
    - (b) for “that Schedule” substitute “Schedule 7”.
  - (4) In subsection (5)—
    - (a) omit “undertaking or” (in each place where it occurs),
    - (b) omit “, accepted or” (in each place where it occurs), and
    - (c) omit “, superseded, released”.
- 28 (1) Section 67 (intervention to protect legitimate interests) is amended as follows.

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- (2) In subsection (7), for “to 32” substitute “to 30”.
- (3) In subsection (8), in the words before paragraph (a), for “to 32” substitute “to 30”.
- (4) In that subsection, in paragraph (d), for “sections 25, 31 and 32” substitute “section 25”.
- 29 In section 68 (scheme for protecting legitimate interests), in subsection (4)(a), for “to 32” substitute “to 30”.
- 30 In section 77 (restrictions on certain share dealings: completed mergers), in subsection (1)(b), omit “71 or”.
- 31 In section 78 (restrictions on certain share dealings: anticipated mergers), in subsection (1)(b), for “section 81” substitute “section 72 or 81”.
- 32 In section 89 (subject matter of undertakings), in subsection (2)—
- (a) omit “71,”, and
  - (b) omit “1,”.
- 33 (1) Section 93 (further role of OFT in relation to undertakings and orders) is amended as follows.
- (2) In subsection (1), in paragraph (b), omit “1,”.
  - (3) In subsection (2), omit “1,”.
  - (4) In subsection (4), omit “1,”.
- 34 In section 94 (rights to enforce undertakings and orders), in subsection (8), omit “1,”.
- 35 (1) Section 99 (functions in relation to merger notices) is amended as follows.
- (2) Omit subsections (2) to (4).
  - (3) In subsection (5), in paragraph (c), for the words from “or any” to “as required” substitute “or the person who gave the merger notice has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 109 in relation to the case concerned”.
- 36 (1) Section 107 (further publicity requirements) is amended as follows.
- (2) In subsection (1), for paragraph (a) substitute—
    - “(a) any decision made by it that the duty to make a reference under section 22 or 33 applies and any such reference made by it;
    - (aa) any decision made by it that the duty to make such a reference does not apply (other than a decision made by virtue of subsection (2)(b) of section 33);”.
  - (3) In that subsection, after paragraph (aa) insert—
    - “(ab) any notice given by it as mentioned in paragraph (b) of the definition of “initial period” in section 34ZA(3);
    - (ac) any extension by it under section 34ZB of the initial period;
    - (ad) any decision made by it to cancel an extension as mentioned in section 34ZB(7)(b);
    - (ae) any extension by it under section 34A of the preliminary assessment period;

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- (af) any decision made by it to cancel an extension as mentioned in section 34A(6A)(b);
  - (ag) any extension by it under section 46B of the preliminary assessment period;
  - (ah) any decision made by it to cancel an extension as mentioned in section 46B(3A)(b);”.
- (4) In that subsection, omit paragraph (d).
- (5) In that subsection, after paragraph (e) insert—
- “(ea) any notice given by it under section 73A(2)(b);
  - (eb) any extension by it under section 73A of the period for considering whether to accept an undertaking under section 73;
  - (ec) any decision made by it to cancel an extension as mentioned in section 73A(11)(b);”.
- (6) In that subsection, in paragraph (f), for “such an undertaking or order” substitute “an order mentioned in paragraph (e)”.
- (7) At the end of that subsection insert “; and
- (i) any notice given by it under section 96(2A).”
- (8) In subsection (2), after paragraph (e) insert—
- “(ea) any extension by it under section 41A of the period within which its duty under section 41(2) is to be discharged;
  - (eb) any decision made by it to cancel an extension as mentioned in section 41A(7)(b);”.
- (9) In subsection (3), omit paragraphs (h) and (i).
- 37 In section 130 (index of defined expressions), omit the entry for “Undertakings under paragraph 1 of Schedule 7”.
- 38 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.
- (2) In paragraph 7, in sub-paragraph (1), for paragraph (b) substitute—
- “(b) no orders under paragraph 2 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned.”
- (3) In paragraph 8, in sub-paragraph (1), for paragraph (b) substitute—
- “(b) no orders under paragraph 2 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned.”
- 39 In Schedule 15 (enactments conferring functions for the purposes of which specified information may be disclosed), at the end insert—
- “The Health and Social Care Act 2012.”

*Office of Communications Act 2002 (c. 11)*

- 40 In Schedule 1 to the Office of Communications Act 2002 (constitution etc. of the OFCOM), in paragraph 18—
- (a) the existing text becomes sub-paragraph (1), and

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(b) after that sub-paragraph insert—

“(2) Sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

*Railways and Transport Safety Act 2003 (c. 20)*

41 In Schedule 1 to the Rail and Transport Safety Act 2003 (constitution etc. of the Office of Rail Regulation), in paragraph 7—

(a) the existing text becomes sub-paragraph (1), and

(b) after that sub-paragraph insert—

“(2) Sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

*Communications Act 2003 (c. 21)*

42 The Communications Act 2003 is amended as follows.

43 (1) Section 192 (appeals against decisions by OFCOM etc) is amended as follows.

(2) In subsection (1), after paragraph (d) insert—

“(e) a decision by the CMA to which effect is given by an order made under section 193A.”

(3) In subsection (6)(b), after “the Secretary of State” insert “, by the CMA”.

44 In section 193 (reference of price control matters), in subsection (10), after “this section” insert “and section 193A”.

45 In section 195 (decisions of the Tribunal), in subsection (9), for “or the Secretary of State” (in each place it occurs) substitute “, the Secretary of State or the CMA”.

46 In section 371 (functions under the Competition Act 1998), in subsections (2) and (3)(a), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

*Health and Social Care Act 2012 (c. 7)*

47 The Health and Social Care Act 2012 is amended as follows.

48 In section 72 (functions under the Competition Act 1998), in subsections (2) and (3), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

49 In Schedule 8 (constitution etc. of Monitor), in paragraph 11, after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

*Civil Aviation Act 2012 (c. 19)*

50 The Civil Aviation Act 2012 is amended as follows.

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- 51 In section 62 (functions under Competition Act 1998), in subsections (2) and (4), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.
- 52 In section 63 (Competition Act 1998: supplementary), in subsection (1), after “38(1) to (6)” insert “, 40B(1) to (4)”.

*Electricity (Northern Ireland) Order 1992 (SI 1992/231 (N.I. 1))*

- 53 In article 46 of the Electricity (Northern Ireland) Order 1992 (functions with respect to competition), in paragraphs (3), (3A) and (6)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

*Gas (Northern Ireland) Order 1996 (SI 1996/275 (N.I. 2))*

- 54 In article 23 of the Gas (Northern Ireland) Order 1996 (functions with respect to competition), in paragraphs (3), (3A) and (6)(b), after “38(1) to (6)” (in each place where it occurs) insert “, 40B(1) to (4)”.

*Energy (Northern Ireland) Order 2003 (SI 2003/419 (N.I. 6))*

- 55 In Schedule 1 to the Energy (Northern Ireland) Order 2003 (constitution etc. of the Authority), in paragraph 9, after sub-paragraph (2) insert—

“(2A) Sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.”

SCHEDULE 16

Section 60(5)

LOCAL LISTED BUILDING CONSENT ORDERS: PROCEDURE

In the Planning (Listed Buildings and Conservation Areas) Act 1990, after Schedule 2 insert—

“SCHEDULE 2A

Section 26D

LOCAL LISTED BUILDING CONSENT ORDERS: PROCEDURE

**1 Preparation**

- 1 (1) A local listed building consent order must be prepared in accordance with such procedure as is prescribed by regulations under this Act.
- (2) The regulations may include provision as to—
- (a) the preparation, submission, approval, adoption, revision, revocation and withdrawal of a local listed building consent order;
  - (b) notice, publicity, and inspection by the public;
  - (c) consultation with and consideration of views of such persons and for such purposes as are prescribed;
  - (d) the making and consideration of representations.

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*Status: This is the original version (as it was originally enacted).*

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## 2 Revision

- 2 (1) The local planning authority may at any time prepare a revision of a local listed building consent order.
- (2) An authority must prepare a revision of a local listed building consent order—
  - (a) if the Secretary of State directs them to do so, and
  - (b) in accordance with such timetable as the Secretary of State directs.
- (3) This Schedule applies to the revision of a local listed building consent order as it applies to the preparation of the order.
- (4) A local listed building consent order may not be varied except by revision under this paragraph.

## 3 Order to be adopted

- 3 A local listed building consent order is of no effect unless it is adopted by resolution of the local planning authority.

## 4 Annual report

- 4 (1) While a local listed building consent order is in force the local planning authority must prepare reports containing such information as is prescribed as to the extent to which the order is achieving its purposes.
- (2) A report under this paragraph must—
  - (a) be in respect of a period—
    - (i) which the authority considers appropriate in the interests of transparency,
    - (ii) which begins with the end of the period covered by the authority's most recent report under this paragraph (or, in the case of the first report, with the day the order comes into force), and
    - (iii) which is not longer than 12 months or such shorter period as is prescribed;
  - (b) be in such form as is prescribed;
  - (c) contain such other matter as is prescribed.
- (3) The authority must make its reports under this section available to the public.”

## SCHEDULE 17

Section 63

### HERITAGE PLANNING REGULATION

#### *National Heritage Act 1983 (c. 47)*

- 1 (1) Section 33 of the National Heritage Act 1983 (the Commission's general function) is amended as follows.
- (2) In subsection (2A)—
  - (a) in paragraph (a) after “1979” insert “, under section 196D of the Town and Country Planning Act 1990”, and



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*Status: This is the original version (as it was originally enacted).*

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(b) in paragraph (b) for “that Part or of that Act of 1990” substitute “Part 1 of the Ancient Monuments and Archaeological Areas Act 1979 or the Planning (Listed Buildings and Conservation Areas) Act 1990”.

(3) After subsection (2A) insert—

“(2AA) In relation to an actual or apprehended breach of planning control in respect of relevant demolition, in section 187B of the Town and Country Planning Act 1990 (injunctions restraining breaches of planning control) reference to a local planning authority includes reference to the Commission.

(2AB) In subsection (2AA)—

“breach of planning control” has the same meaning as in the Town and Country Planning Act 1990 (see section 171A of that Act);

“relevant demolition” has the same meaning as in section 196D of that Act.”

#### *Town and Country Planning Act 1990 (c. 8)*

2 The Town and Country Planning Act 1990 is amended as follows.

3 In section 108 (compensation for refusal or conditional grant of planning permission formerly granted by order) after subsection (3E) insert—

“(3F) This section does not apply to the extent that the development referred to in subsection (1)(b) would, while permitted by a development order, have required conservation area consent under the Planning (Listed Buildings and Conservation Areas) Act 1990.”

4 In section 171B (time limits for enforcement of breaches of planning control) after subsection (2) insert—

“(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).”

5 In section 174 (appeal against enforcement notice) before subsection (3) insert—

“(2C) Where any breach of planning control constituted by the matters stated in the notice relates to relevant demolition (within the meaning of section 196D), an appeal may also be brought on the grounds that—

(a) the relevant demolition was urgently necessary in the interests of safety or health;

(b) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter; and

(c) the relevant demolition was the minimum measure necessary.”

6 After section 196C insert—

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*Status: This is the original version (as it was originally enacted).*

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*“Conservation areas*

**196D Offence of failing to obtain planning permission for demolition of unlisted etc buildings in conservation areas in England**

**196D Offence of failing to obtain planning permission for demolition of unlisted etc buildings in conservation areas in England**

- (1) It is an offence for a person to carry out or cause or permit to be carried out relevant demolition without the required planning permission.
- (2) It is also an offence for a person to fail to comply with any condition or limitation subject to which planning permission for relevant demolition is granted.
- (3) In this section “relevant demolition” means the demolition of a building that—
  - (a) is situated in a conservation area in England; and
  - (b) is not a building to which section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply by virtue of section 75 of that Act (listed buildings, certain ecclesiastical buildings, scheduled monuments and buildings described in a direction of the Secretary of State under that section).
- (4) It is a defence for a person accused of an offence under this section to prove the following matters—
  - (a) that the relevant demolition was urgently necessary in the interests of safety or health;
  - (b) that it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;
  - (c) that the relevant demolition was the minimum measure necessary; and
  - (d) that notice in writing of the relevant demolition was given to the local planning authority as soon as reasonably practicable.
- (5) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (6) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003, subsection (5)(a) has effect as if the reference to 12 months were to 6 months.
- (7) In relation to an offence committed before the coming into force of section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, subsection (5)(a) has effect as if the reference to a fine were a reference to a fine not exceeding £20,000.
- (8) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to

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any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

- (9) Where, after a person commits an offence under this section, planning permission is granted for any development carried out before the grant of the permission, that grant does not affect the person's liability for the offence."

*Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9)*

- 7 The Planning (Listed Buildings and Conservation Areas) Act 1990 is amended as follows.
- 8 (1) Section 1 (listing of buildings of special architectural or historic interest) is amended as follows.
- (2) In subsection (5) after "shall" insert ", subject to subsection (5A)(a),".
- (3) After subsection (5) insert—
- “(5A) In a list compiled or approved under this section, an entry for a building situated in England may provide—
- (a) that an object or structure mentioned in subsection (5)(a) or (b) is not to be treated as part of the building for the purposes of this Act;
- (b) that any part or feature of the building is not of special architectural or historic interest.”
- 9 (1) Section 6 (issue of certificate that building not intended to be listed) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) The Secretary of State may, on the application of any person, issue a certificate stating that the Secretary of State does not intend to list a building situated in England.”
- (3) In subsection (1)(a) after "building" insert "situated in Wales".
- (4) In subsection (2) for "such a certificate" substitute "a certificate under subsection (A1) or (1)".
- (5) In subsection (3) after "subsection" insert "(A1) or".
- 10 In section 32(1)(a) (purchase notice on refusal or conditional grant of consent)—
- (a) for "listed building consent in respect of a building" substitute "on an application for listed building consent in respect of a building, consent";
- (b) before "is revoked" insert "such consent granted on an application".
- 11 In section 62(2) (validity of certain orders and decisions), after paragraph (a) insert—
- “(aa) any decision to approve or reject a local listed building consent order or part of such an order;
- (ab) any decision on an appeal under section 26K;”.
- 12 (1) Section 74 (control of demolition in conservation areas) is amended as follows.
- (2) In subsection (1) after the first "area" insert "in Wales".
- (3) After subsection (2) insert—

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“(2A) Sections 56, 66(1) and 90(2) to (4) have effect in relation to buildings in conservation areas in England as they have effect in relation to listed buildings, subject to such exceptions and modifications as may be prescribed by regulations.”

- (4) In subsection (3) after “areas” insert “in Wales”.
- (5) In subsection (4) for “Any such regulations” substitute “Regulations made under subsection (3)”.
- 13 In section 75 (cases in which section 74 does not apply) in subsection (11)—
- (a) for “that section”, in both places those words appear, substitute “section 74”, and
  - (b) after “43” insert “or section 196D of the principal Act (offence of failing to obtain, or comply with, planning permission for demolition of unlisted etc building in conservation area in England)”.
- 14 In section 82(3) (application of Act to land and works of local planning authorities) for “to 29” substitute “to 26, 28, 29”.
- 15 In section 82A(2) (application to the Crown), after paragraph (c) insert—
- “(ca) section 26J;”.
- 16 In section 88(2)(c) (rights of entry) after “11” insert “, 26J”.
- 17 In section 92(2)(b) (application to Isles of Scilly), after “Schedules 1, 2” insert “, 2A”.
- 18 (1) Section 93 (regulations and orders) is amended as follows.
- (2) In subsection (4) after “8(5),” insert “26C,”.
  - (3) In subsection (5A) after “section” insert “26C or”.
- 19 (1) Schedule 3 (determination of certain appeals by person appointed by Secretary of State) is amended as follows.
- (2) In paragraph 1(1), 2(8)(a) and 3(3) after “20” insert “, 26K”.
  - (3) In paragraph 2(1) after paragraph (a) (before “and” at the end) insert—
- “(aa) in relation to an appeal under section 26K, as the Secretary of State has under section 26K(4) to (6);”.

### *Application*

- 20 Paragraph 8 applies in relation to entries for buildings that are listed, or entries that are amended, on or after the date on which that paragraph comes into force.

## SCHEDULE 18

Section 71(2)

### ADJUDICATORS: BANKRUPTCY APPLICATIONS BY DEBTORS AND BANKRUPTCY ORDERS

#### “CHAPTER A1

### ADJUDICATORS: BANKRUPTCY APPLICATIONS BY DEBTORS AND BANKRUPTCY ORDERS

#### **263H Bankruptcy applications to an adjudicator**

##### **263H 263H Bankruptcy applications to an adjudicator**

- (1) An individual may make an application to an adjudicator in accordance with this Chapter for a bankruptcy order to be made against him or her.
- (2) An individual may make a bankruptcy application only on the ground that the individual is unable to pay his or her debts.

#### **263I Debtors against whom an adjudicator may make a bankruptcy order**

##### **263I 263I Debtors against whom an adjudicator may make a bankruptcy order**

- (1) An adjudicator has jurisdiction to determine a bankruptcy application only if—
  - (a) the centre of the debtor’s main interests is in England and Wales, or
  - (b) the centre of the debtor’s main interests is not in a member state of the European Union which has adopted the EC Regulation, but the test in subsection (2) is met.
- (2) The test is that—
  - (a) the debtor is domiciled in England and Wales, or
  - (b) at any time in the period of three years ending with the day on which the application is made to the adjudicator, the debtor—
    - (i) has been ordinarily resident, or has had a place of residence, in England and Wales, or
    - (ii) has carried on business in England and Wales.
- (3) The reference in subsection (2) to the debtor carrying on business includes—
  - (a) the carrying on of business by a firm or partnership of which the debtor is a member, and
  - (b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.
- (4) In this section, references to the centre of the debtor’s main interests have the same meaning as in Article 3 of the EC Regulation.

#### **263J Conditions applying to bankruptcy application**

##### **263J 263J Conditions applying to bankruptcy application**

- (1) A bankruptcy application must include—
  - (a) such particulars of the debtor’s creditors, debts and other liabilities, and assets, as may be prescribed, and

- (b) such other information as may be prescribed.
- (2) A bankruptcy application is not to be regarded as having been made unless any fee or deposit required in connection with the application by an order under section 415 has been paid to such person, and within such period, as may be prescribed.
- (3) A bankruptcy application may not be withdrawn.
- (4) A debtor must notify the adjudicator if, at any time before a bankruptcy order is made against the debtor or the adjudicator refuses to make such an order—
  - (a) the debtor becomes able to pay his or her debts, or
  - (b) a bankruptcy petition has been presented to the court in relation to the debtor.

### **263K Determination of bankruptcy application**

#### **263K 263K Determination of bankruptcy application**

- (1) After receiving a bankruptcy application, an adjudicator must determine whether the following requirements are met—
  - (a) the adjudicator had jurisdiction under section 263I to determine the application on the date the application was made,
  - (b) the debtor is unable to pay his or her debts at the date of the determination,
  - (c) no bankruptcy petition is pending in relation to the debtor at the date of the determination, and
  - (d) no bankruptcy order has been made in respect of any of the debts which are the subject of the application at the date of the determination.
- (2) If the adjudicator is satisfied that each of the requirements in subsection (1) are met, the adjudicator must make a bankruptcy order against the debtor.
- (3) If the adjudicator is not so satisfied, the adjudicator must refuse to make a bankruptcy order against the debtor.
- (4) The adjudicator must make a bankruptcy order against the debtor or refuse to make such an order before the end of the prescribed period (“the determination period”).

### **263L Adjudicator’s requests for further information**

#### **263L 263L Adjudicator’s requests for further information**

- (1) An adjudicator may at any time during the determination period request from the debtor information that the adjudicator considers necessary for the purpose of determining whether a bankruptcy order must be made.
- (2) The adjudicator may specify a date before which information requested under subsection (1) must be provided; but that date must not be after the end of the determination period.
- (3) If the rules so prescribe, a request under subsection (1) may include a request for information to be given orally.
- (4) The rules may make provision enabling or requiring an adjudicator to request information from persons of a prescribed description in prescribed circumstances.

## **263M Making of bankruptcy order**

### **263M 263M Making of bankruptcy order**

- (1) This section applies where an adjudicator makes a bankruptcy order as a result of a bankruptcy application.
- (2) The order must be made in the prescribed form.
- (3) The adjudicator must—
  - (a) give a copy of the order to the debtor, and
  - (b) give notice of the order to persons of such description as may be prescribed.

## **263N Refusal to make a bankruptcy order: review and appeal etc.**

### **263N 263N Refusal to make a bankruptcy order: review and appeal etc.**

- (1) Where an adjudicator refuses to make a bankruptcy order on a bankruptcy application, the adjudicator must give notice to the debtor—
  - (a) giving the reasons for the refusal, and
  - (b) explaining the effect of subsections (2) to (5).
- (2) If requested by the debtor before the end of the prescribed period, the adjudicator must review the information which was available to the adjudicator when the determination that resulted in the refusal was made.
- (3) Following a review under subsection (2) the adjudicator must—
  - (a) confirm the refusal to make a bankruptcy order, or
  - (b) make a bankruptcy order against the debtor.
- (4) Where the adjudicator confirms a refusal under subsection (3), the adjudicator must give notice to the debtor—
  - (a) giving the reasons for the confirmation, and
  - (b) explaining the effect of subsection (5).
- (5) If the refusal is confirmed under subsection (3), the debtor may appeal against the refusal to the court before the end of the prescribed period.

## **263O False representations and omissions**

### **263O 263O False representations and omissions**

- (1) It is an offence knowingly or recklessly to make any false representation or omission in—
  - (a) making a bankruptcy application to an adjudicator, or
  - (b) providing any information to an adjudicator in connection with a bankruptcy application.
- (2) It is an offence knowingly or recklessly to fail to notify an adjudicator of a matter in accordance with a requirement imposed by or under this Part.
- (3) It is immaterial for the purposes of an offence under this section whether or not a bankruptcy order is made as a result of the application.
- (4) It is not a defence in proceedings for an offence under this section that anything relied on, in whole or in part, as constituting the offence was done outside England and Wales.

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- (5) Proceedings for an offence under this section may only be instituted—
- (a) by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.”

## SCHEDULE 19

Section 71(3)

## ADJUDICATORS: MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 The Insolvency Act 1986 is amended in accordance with this Schedule.
- 2 In section 253 (application for interim order), omit subsection (5).
- 3 In section 255 (cases in which interim order can be made), in subsection (1)(b) for “petition for his own bankruptcy” substitute “make a bankruptcy application”.
- 4 (1) Section 256A (debtor’s proposal and nominee’s report) is amended as follows.
  - (2) In subsection (1) omit the words from “unless” to the end.
  - (3) In subsection (3) for “petition for his own bankruptcy” substitute “make a bankruptcy application”.
- 5 For the heading to Chapter 1 of Part 9 substitute “The court: bankruptcy petitions and bankruptcy orders”.
- 6 In section 264 (who may present a bankruptcy petition), in subsection (1) omit paragraph (b).
- 7 For section 265 (conditions to be satisfied in respect of debtor) substitute—

**“265 Creditor’s petition: debtors against whom the court may make a bankruptcy order**

**“265 “265 Creditor’s petition: debtors against whom the court may make a bankruptcy order**

- (1) A bankruptcy petition may be presented to the court under section 264(1)
  - (a) only if—
    - (a) the centre of the debtor’s main interests is in England and Wales, or
    - (b) the centre of the debtor’s main interests is not in a member state of the European Union which has adopted the EC Regulation, but the test in subsection (2) is met.
  - (2) The test is that—
    - (a) the debtor is domiciled in England and Wales, or
    - (b) at any time in the period of three years ending with the day on which the petition is presented, the debtor—
      - (i) has been ordinarily resident, or has had a place of residence, in England and Wales, or
      - (ii) has carried on business in England and Wales.
  - (3) The reference in subsection (2) to the debtor carrying on business includes—
    - (a) the carrying on of business by a firm or partnership of which the debtor is a member, and



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(b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(4) In this section, references to the centre of the debtor’s main interests have the same meaning as in Article 3 of the EC Regulation.”

8 In section 266 (bankruptcy petitions: other preliminary conditions), in subsection (4) omit “, (b)”.

9 (1) Sections 272 to 274A (and the cross-heading immediately preceding those sections) (debtor’s petition) are repealed.

(2) In consequence of the repeal of section 274A by sub-paragraph (1), omit paragraph 3 of Schedule 20 to the Tribunals, Courts and Enforcement Act 2007 (debt relief orders: consequential amendments).

10 For the cross-heading immediately before section 278 substitute—  
“CHAPTER 1A

*Commencement and duration of bankruptcy”.*

11 In section 278 (commencement and continuance), in paragraph (b) (discharge of bankruptcy order) omit “the following provisions of”.

12 In section 279 (duration of bankruptcy), in subsection (6) for “adjudged” substitute “made”.

13 In section 282 (court’s power to annul bankruptcy order), in subsection (2)—

(a) omit “, (b)”;

(b) after “section 264(1)” insert “or on a bankruptcy application”, and

(c) in paragraph (a) after “pending” insert “or the application was ongoing”.

14 In section 283 (definition of bankrupt’s estate), in subsection (5)(a) for “adjudged” substitute “made”.

15 (1) Section 284 (restrictions on dispositions of property) is amended as follows.

(2) In subsection (1) for “adjudged” substitute “made”.

(3) In subsection (3) for “presentation of the petition for the bankruptcy order” substitute “making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition”.

(4) In subsection (4), in paragraph (a) before “petition” insert “bankruptcy application had been made or (as the case may be) that the bankruptcy”.

16 (1) Section 285 (restriction on proceedings and remedies) is amended as follows.

(2) In subsection (1)—

(a) after “when” insert “proceedings on a bankruptcy application are ongoing or”, and

(b) for “adjudged” substitute “made”.

(3) In subsection (2) after “proof that” insert “a bankruptcy application has been made or”.

17 (1) Section 286 (power to appoint interim receiver) is amended as follows.

(2) Omit subsection (2).

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- (3) In subsection (8), for “adjudged” substitute “made”.
- 18 In section 288 (statement of affairs), in subsection (1) for “debtor’s petition” substitute “bankruptcy application”.
- 19 In section 290 (public examination of bankrupt), in subsection (4)(a) for “adjudged” substitute “made”.
- 20 In section 293 (summoning of meeting to appoint first trustee), in subsections (2) and (3) for “court” substitute “prescribed person”.
- 21 In section 295 (failure of meeting to appoint trustee), in subsection (3) for “court” substitute “prescribed person”.
- 22 (1) Section 297 (appointment of trustee of bankrupt’s estate: special cases) is amended as follows.
- (2) Omit subsection (4).
- (3) In subsection (6) omit “(4) or”.
- 23 In section 298 (removal of trustee and vacation of office), in subsections (7) and (8) for “court” substitute “prescribed person”.
- 24 (1) Section 299 (release of trustee) is amended as follows.
- (2) In subsection (1)(a) for “to the court” substitute “under this paragraph to the prescribed person”.
- (3) In subsection (3)(a) for “court” substitute “prescribed person”.
- 25 (1) Section 320 (court order vesting disclaimed property) is amended as follows.
- (2) In subsection (2)(c) before “bankruptcy” insert “bankruptcy application was made or (as the case may be) the”.
- (3) In subsection (3)(c) before “bankruptcy” insert “bankruptcy application was made or (as the case may be) the”.
- 26 In section 321 (orders under section 320 in respect of leaseholds), in subsection (1) (a) before “bankruptcy” insert “bankruptcy application was made or (as the case may be) the”.
- 27 In section 323 (mutual credit and set-off), in subsection (3) before “a bankruptcy” insert “proceedings on a bankruptcy application relating to the bankrupt were ongoing or that”.
- 28 In section 334 (stay of distribution in case of second bankruptcy), in subsection (2) before “presentation of the petition” insert “making of the application or (as the case may be) the”.
- 29 (1) Section 336 (rights of occupation etc of bankrupt’s spouse or civil partner) is amended as follows.
- (2) In subsection (1) for “presentation of the petition for the bankruptcy order” substitute “making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition”.
- (3) In subsection (2) for “adjudged” substitute “made”.
- 30 In section 337 (rights of occupation of bankrupt), in subsection (1)—

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- (a) in paragraph (a) for “adjudged” substitute “made”, and
  - (b) in paragraph (b) before “bankruptcy petition” insert “bankruptcy application was made or (as the case may be) the”.
- 31 In section 339 (transactions at an undervalue), in subsection (1) for “adjudged” substitute “made”.
- 32 In section 340 (preferences), in subsection (1) for “adjudged” substitute “made”.
- 33 In section 341 (meaning of “relevant time” under sections 339 and 340), in subsection (1)(a) for “presentation of the bankruptcy petition on which the individual is adjudged” substitute “making of the bankruptcy application as a result of which, or (as the case may be) the presentation of the bankruptcy petition on which, the individual is made”.
- 34 (1) Section 342 (orders under sections 339 and 340) is amended as follows.
  - (2) In subsection (1) for “adjudged” substitute “made”.
  - (3) In subsection (5)—
    - (a) for paragraph (a) substitute—
      - “(a) of the fact that the bankruptcy application as a result of which, or (as the case may be) the bankruptcy petition on which, the individual in question is made bankrupt has been made or presented; or”, and
      - (b) in paragraph (b) for “adjudged” substitute “made”.
- 35 In section 342A (recovery of excessive pension contributions), in subsection (1) for “adjudged” substitute “made”.
- 36 In section 343 (extortionate credit transactions), in subsection (1) for “adjudged” substitute “made”.
- 37 (1) Section 344 (avoidance of general assignment of book debts) is amended as follows.
  - (2) In subsection (1) for “adjudged” substitute “made”.
  - (3) In subsection (2) before “presentation” insert “making of the bankruptcy application or (as the case may be) the”.
- 38 In section 345 (contracts to which bankrupt is a party), in subsection (1) for “adjudged” substitute “made”.
- 39 (1) Section 346 (enforcement procedures) is amended as follows.
  - (2) In subsections (1) and (2) for “adjudged” substitute “made”.
  - (3) In subsection (3)—
    - (a) in paragraph (b) before “bankruptcy” insert “bankruptcy application has been made or a”, and
    - (b) in paragraph (c) before “on that petition” insert “as a result of that application or”.
  - (4) In subsection (4)(a) after “while” insert “proceedings on a bankruptcy application are ongoing or (as the case may be)”.
- 40 (1) Section 347 (distress, etc) is amended as follows.
  - (2) In subsection (2)—

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- (a) after “individual to whom” insert “a bankruptcy application or”, and
  - (b) before “on that petition” insert “as a result of that application or”.
- (3) In subsection (3) for “adjudged” substitute “made”.
- 41 In section 348 (apprenticeships, etc), in subsection (1)(a) for “petition on which the order was made” substitute “application for the order was made or (as the case may be) the petition for the order”.
- 42 In section 350 (application of Chapter 6 of Part 9: bankruptcy offences), in subsection (1) after “applies” insert “—
- (a) where an adjudicator has made a bankruptcy order as a result of a bankruptcy application, or
  - (b)”.
- 43 (1) Section 351 (definitions for the purposes of Chapter 6 of Part 9) is amended as follows.
- (2) In paragraph (b) before “presentation” insert “making of the bankruptcy application or (as the case may be) the”.
  - (3) Omit paragraph (c), and the preceding “and”.
- 44 (1) Section 354 (concealment of property) is amended as follows.
- (2) In subsection (1)(c) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
  - (3) In subsection (3)(a) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 45 (1) Section 355 (concealment of books and papers; falsification) is amended as follows.
- (2) In subsection (2)(d) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
  - (3) In subsection (3)(b) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 46 In section 356 (false statements), in subsection (2)(c) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 47 In section 358 (absconding), in paragraph (b) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 48 (1) Section 359 (fraudulent dealing with property obtained on credit) is amended as follows.
- (2) In subsection (1) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
  - (3) In subsection (2) before “petition” insert “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy”.
- 49 In section 360 (obtaining credit and engaging in business), in subsection (1)(b) for “adjudged” substitute “made”.
- 50 (1) Section 364 (power of arrest) is amended as follows.

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- (2) In subsection (1)(a) after “to whom a” insert “bankruptcy application or a”.
- (3) In subsection (2) before “presentation” insert “making of the bankruptcy application or the”.
- 51 In section 376 (time limits), after “anything” insert “(including anything in relation to a bankruptcy application)”.
- 52 (1) Section 381 (definition of “bankrupt” and associated terminology) is amended as follows.
- (2) In subsection (1) for “adjudged” (in both places where it occurs) substitute “made”.
- (3) After subsection (1) insert—
- “(1A) Bankruptcy application” means an application to an adjudicator for a bankruptcy order.”
- (4) In subsection (2) for “adjudging” substitute “making”.
- 53 In section 383 (definition of “creditor” etc.), in subsection (1)(b)—
- (a) after “to whom a” insert “bankruptcy application or”, and
- (b) after “that” insert “application or”.
- 54 In section 384 (definitions of “prescribed” and “the rules”), in subsection (1) omit “section 273;”.
- 55 In section 385 (miscellaneous definitions), in subsection (1)—
- (a) before the definition of “the court” insert—
- ““adjudicator” means a person appointed by the Secretary of State under section 398A;”,
- (b) in the definition of “the debtor”, in paragraph (b)—
- (i) before “bankruptcy petition” insert “bankruptcy application or a”, and
- (ii) after “to whom the” insert “application or”,
- (c) omit the definition of “debtor’s petition”, and
- (d) before the definition of “dwelling house” insert—
- “determination period” has the meaning given in section 263K(4);”.
- 56 In section 387 (meaning of “the relevant date”), in subsection (6)(a) after “after” insert “the making of the bankruptcy application or (as the case may be)”.
- 57 In section 389A (authorisation of nominees and supervisors), in subsection (3)(a) for “adjudged” substitute “made”.
- 58 In section 390 (persons not qualified to act as insolvency practitioners), in subsection (4)(a) for “adjudged” substitute “made”.
- 59 (1) Section 415 (fees orders) is amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (a) omit “and”, and
- (b) at the end of paragraph (b) insert “and
- (c) the performance by an adjudicator of functions under Part 9 of this Act.”.
- (3) After subsection (1) insert—

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“(1A) An order under subsection (1) may make different provision for different purposes, including by reference to the manner or form in which proceedings are commenced.”

60 In section 421A (insolvent estates: joint tenancies), in subsection (9) in the definition of “value lost to the estate”, for “adjudged” substitute “made”.

61 In section 424 (who may apply for an order under section 423 in respect of transactions entered into at an undervalue), in subsection (1)(a) for “adjudged” substitute “made”.

62 In Schedule 4ZA (conditions for making a debt relief order), for paragraph 3 substitute—

“3 A bankruptcy application under Part 9—  
(a) has not been made before the determination date; or  
(b) has been so made, but proceedings on the application have been finally disposed of before that date.”

63 (1) In Schedule 4A (bankruptcy restrictions orders), paragraph 2 is amended as follows.

(2) In sub-paragraph (2)—

(a) in paragraph (a), for the words from “petition” to the end substitute “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition and ending with the date of the application for the bankruptcy restrictions order”, and

(b) in paragraph (j), for “presentation of the petition” substitute “the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition”.

(3) In sub-paragraph (4) omit the definition of “before petition”.

64 In Schedule 6 (categories of preferential debts), in paragraph 14(1) for “adjudged” substitute “made”.

65 (1) Schedule 9 (provisions capable of inclusion in individual insolvency rules) is amended as follows.

(2) After paragraph 4 insert—

*“4A Adjudicators*

4A Provision for regulating the practice and procedure of adjudicators in the discharge of functions for the purposes of Part 9 of this Act.

4B Provision about the form and content of a bankruptcy application (including an application for a review of an adjudicator’s determination).”

(3) After paragraph 4B (as inserted by sub-paragraph (2)) insert—

*“4C Appeals against determinations by adjudicators*

4C Provision about the making and determining of appeals to the court against a determination by an adjudicator, including provision—

(a) enabling the court to make a bankruptcy order on such an appeal,  
and

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(b) about where such appeals lie.”

(4) After paragraph 24 insert—

“24A Provision requiring adjudicators—

- (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications,
- (b) to make files and records available for inspection by persons of a prescribed description, and
- (c) to provide files and records, or copies of them, to persons of a prescribed description.

24B Provision requiring an adjudicator to make returns to the Secretary of State of the adjudicator’s business under Part 9 of this Act.

24C Provision requiring official receivers—

- (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications, and
- (b) to make files and records available for inspection by persons of a prescribed description.

24D Provision requiring a person to whom notice is given under section 293(2), 295(3), 298(7) or (8) or section 299(1)(a) or (3)(a)—

- (a) to keep files and other records of notices given under the section in question, and
- (b) to make files and records available for inspection by persons of a prescribed description.”

66 (1) In the Table in Schedule 10 (punishment of offences), insert the following entry after the entry relating to section 262A(1)—

“2630	False representations or omissions in connection with a bankruptcy application.	1. On indictment 2. Summary	1. 7 years or a fine, or both. 2. 12 months or the statutory maximum, or both.”
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(2) In the application of the entry inserted by sub-paragraph (1) in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (limit on magistrates’ court powers to impose imprisonment), the reference in the fourth column to “12 months” is to be read as a reference to “6 months”.

## SCHEDULE 20

Section 72(4)

### ABOLITION OF AGRICULTURAL WAGES BOARD AND RELATED ENGLISH BODIES: CONSEQUENTIAL PROVISION

1 In section 28 of the Rent (Agriculture) Act 1976 (duty of housing authority upon receiving application that agricultural worker be re-housed etc), in subsection (3), for “The authority” substitute “If the dwelling-house is in Wales, the authority”.

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2 The repeals and revocations in the following table have effect.

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Agricultural Wages Act 1948 (c. 47)	Section 1. In section 2— (a) in subsection (1)— (a) the words “England and”, and (b) paragraph (a), and (b) subsection (4). Sections 3 to 4. Sections 6 to 16. In section 17— (a) in subsection (1), the definition of “the national minimum wage”, and (b) subsection (1A). Sections 17A to 19. Schedules 1, 2 and 4.
The Agricultural Wages Committee Regulations 1949 (S.I. 1949/1885)	Regulation 3(2)(a) and the word “and” after it. Regulation 16.
Public Records Act 1958 (c. 51)	In the table at the end of paragraph 3 of Schedule 1, the words “Agricultural Wages Board.”
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the words “Agricultural Wages Board for England and Wales.”
Agriculture Act 1967 (c. 22)	Section 67.
Agriculture (Miscellaneous Provisions) Act 1968 (c. 34)	Section 46.
Agricultural Wages Committees (Wages Structure) Regulations 1971 (S.I. 1971/844)	The whole instrument.
Agricultural Wages Committees (Areas) Order 1974 (S.I. 1974/515)	In article 3(1), the words— (a) “Subject to the provisions of this order”, and (b) “an agricultural wages committee for each county in England and”. Article 3(2). Article 4. The Schedule.
Social Security (Consequential Provisions) Act 1975 (c. 18)	In Schedule 2, paragraph 32.
House of Commons Disqualification Act 1975 (c. 24)	In Part 3 of Schedule 1, the words “Member appointed by a Minister of the Crown of the



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<i>Reference</i>	<i>Extent of repeal or revocation</i>
	Agricultural Wages Board for England and Wales.”
<a href="#">Northern Ireland Assembly Disqualification Act 1975 (c. 25)</a>	In Part 3 of Schedule 1, the words “of the Agricultural Wages Board for England and Wales or”.
<a href="#">Social Security Pensions Act 1975 (c. 60)</a>	In Schedule 4, paragraph 10.
<a href="#">Employment Protection Act 1975 (c. 71)</a>	Section 97(1) and (2). Schedule 9. In Schedule 17, paragraph 12.
<a href="#">Agriculture (Miscellaneous Provisions) Act 1976 (c. 55)</a>	In section 4(1)(c), the words from “(including” to the end.
<a href="#">Agricultural Wages Committees (New Combinations of Counties) Order 1981 (S.I. 1981/179)</a>	The whole order.
<a href="#">Agricultural Wages Committee (Cleveland, Durham, Northumberland and Tyne and Wear) Order 1989 (S.I. 1989/1173)</a>	The whole order.
<a href="#">Social Security (Consequential Provisions) Act 1992 (c. 6)</a>	In Schedule 2, paragraph 4.
<a href="#">Agricultural Wages Committees (Areas) (England) Order 1995 (S.I. 1995/3186)</a>	The whole order.
<a href="#">Employment Rights Act 1996 (c. 18)</a>	In section 35— (a) in subsection (2), paragraph (a) and the word “or” at the end of that paragraph, and (b) in subsection (3), paragraph (b) and the “and” before that paragraph.
<a href="#">National Minimum Wage Act 1998 (c. 39)</a>	In section 16(6)— (a) in the definition of “the agricultural wages legislation”, paragraph (a), and (b) in the definition of “relevant authority”, paragraphs (a), (b) and (c).  In section 16A(5)— (a) in the definition of “enforcement officer”, paragraph (b), and (b) in the definition of “the relevant legislation”, paragraph (b).  Section 46(4)(a).  In section 47— (a) subsection (1)(a),

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<i>Reference</i>	<i>Extent of repeal or revocation</i>
	(b) subsection (2)(a) and (d), (c) subsection (4)(a), (d) in subsection (4)(b), the words “(similar provision for Scotland)”, and (e) subsection (6)(a).  In section 55(1), in the definition of “regulations”, the words “by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly or”.
National Minimum Wage Regulations 1999 (S.I. 1999/584)	Part 1 of Schedule 2. Regulation 38(5)(a).
<a href="#">Freedom of Information Act 2000 (c. 36)</a>	In Part 6 of Schedule 1, the words “An Agricultural Wages Board for England and Wales”.
<a href="#">Criminal Justice Act 2003 (c. 44)</a>	In Schedule 25, paragraph 28.
<a href="#">Employment Relations Act 2004 (c. 24)</a>	Section 47. In Schedule 1, paragraph 1.
Public Contracts Regulations 2006 (S.I. 2006/5)	In Schedule 1, in the entry relating to the Agricultural Wages Board and agricultural wages committees, the words “Board and”.
<a href="#">Employment Act 2008 (c. 24)</a>	Section 8(6). Section 9(6).
Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88)	In Schedule 1, in the entry relating to the Agricultural Wages Board and agricultural wages committees, the words “Board and”.

## SCHEDULE 21

Section 73

## UNNECESSARY REGULATION: MISCELLANEOUS

**PART 1**

## NOTIFICATION OF TV SALES ETC

*Wireless Telegraphy Act 1967 (c. 72)*

- 1 The Wireless Telegraphy Act 1967 (the remaining provisions of which make provision for, and in connection with, the recording and notification of the sale or hire of televisions etc) is repealed.
- 2 In consequence, the repeals in the following table have effect.

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Post Office Act 1969 (c. 48)	Section 3.
Customs and Excise Management Act 1979 (c. 2)	In paragraph 12 of Schedule 4, the entries in the table relating to the Wireless Telegraphy Act 1967.
Broadcasting Act 1990 (c. 42)	Section 180. Part 2 of Schedule 18.
Communications Act 2003 (c. 21)	Section 367. Section 393(5)(c). Section 404(4)(d). In Schedule 17, paragraph 39.
Wireless Telegraphy Act 2006 (c. 36)	Section 111(6)(a). Section 118(6)(a). In Schedule 7, paragraph 2.

*Saving provision*

- 3 The repeal of section 3 of the Post Office Act 1969 by paragraph 2 does not affect the construction of any provision mentioned in subsection (1)(i) or (ii) of that section that continues to have effect after the commencement of the repeal.

**PART 2**

WATER UNDERTAKERS: IN-AREA BAN

*Water Industry Act 1991 (c. 56)*

- 4 In section 2 of the Water Industry Act 1991 (general duties with respect to water industry), omit subsection (3)(d)(iii) (duty of Secretary of State and the Water Services Regulation Authority where a licensed water supplier is connected to a relevant undertaker).

**PART 3**

BANKRUPTCY EARLY DISCHARGE PROCEDURE

*Insolvency Act 1986 (c. 45)*

- 5 In section 279 of the Insolvency Act 1986 (duration of bankruptcy), omit subsection (2) (bankrupt discharged early if official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt is unnecessary or concluded).

## SCHEDULE 22

Section 77(4)

## LICENSING OF COPYRIGHT AND PERFORMERS' RIGHTS

**PART 1**

## REGULATION OF LICENSING BODIES

1 In the Copyright, Designs and Patents Act 1988, before Schedule 1 insert—

“SCHEDULE  
A1

## REGULATION OF LICENSING BODIES

**1 Codes of practice**

- 1 (1) The Secretary of State may by regulations make provision for a licensing body to be required to adopt a code of practice that complies with criteria specified in the regulations.
- (2) The regulations may provide that, if a licensing body fails to adopt such a code of practice, any code of practice that is approved for the purposes of that licensing body by the Secretary of State, or by a person designated by the Secretary of State under the regulations, has effect as a code of practice adopted by the body.
- (3) The regulations must provide that a code is not to be approved for the purposes of provision under sub-paragraph (2) unless it complies with criteria specified in the regulations.
- 2 Regulations under paragraph 1 may make provision as to conditions that are to be satisfied, and procedures that are to be followed—
  - (a) before a licensing body is required to adopt a code of practice as described in paragraph 1(1);
  - (b) before a code of practice has effect as one adopted by a licensing body as described in paragraph 1(2).

**3 Licensing code ombudsman**

- 3 (1) The Secretary of State may by regulations make provision—
  - (a) for the appointment of a person (the “licensing code ombudsman”) to investigate and determine disputes about a licensing body’s compliance with its code of practice;
  - (b) for the reference of disputes to the licensing code ombudsman;
  - (c) for the investigation and determination of a dispute so referred.
- (2) Provision made under this paragraph may in particular include provision—
  - (a) about eligibility for appointment as the licensing code ombudsman;
  - (b) about the disputes to be referred to the licensing code ombudsman;

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- (c) requiring any person to provide information, documents or assistance to the licensing code ombudsman for the purposes of an investigation or determination;
- (d) requiring a licensing body to comply with a determination of the licensing code ombudsman;
- (e) about the payment of expenses and allowances to the licensing code ombudsman.

#### **4 Code reviewer**

- 4 (1) The Secretary of State may by regulations make provision—
- (a) for the appointment by the Secretary of State of a person (the “code reviewer”) to review and report to the Secretary of State on—
    - (i) the codes of practice adopted by licensing bodies, and
    - (ii) compliance with the codes of practice;
  - (b) for the carrying out of a review and the making of a report by that person.
- (2) The regulations must provide for the Secretary of State, before appointing a person as the code reviewer, to consult persons whom the Secretary of State considers represent the interests of licensing bodies, licensees, members of licensing bodies, and the Intellectual Property Office.
- (3) The regulations may, in particular, make provision—
- (a) requiring any person to provide information, documents or assistance to the code reviewer for the purposes of a review or report;
  - (b) about the payment of expenses and allowances to the code reviewer.
- (4) In this paragraph “member”, in relation to a licensing body, means a person on whose behalf the body is authorised to negotiate or grant licences.

#### **5 Sanctions**

- 5 (1) The Secretary of State may by regulations provide for the consequences of a failure by a licensing body to comply with—
- (a) a requirement to adopt a code of practice under provision within paragraph 1(1);
  - (b) a code of practice that has been adopted by the body in accordance with a requirement under provision within paragraph 1(1), or that has effect as one adopted by the body under provision within paragraph 1(2);
  - (c) a requirement imposed on the body under any other provision made under this Schedule;
  - (d) an authorisation under regulations under section 116A or 116B;
  - (e) a requirement imposed by regulations under section 116A or 116B;

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- (f) an authorisation under regulations under paragraph 1A or 1B of Schedule 2A;
  - (g) a requirement imposed by regulations under paragraph 1A or 1B of that Schedule.
- (2) The regulations may in particular provide for—
- (a) the imposition of financial penalties or other sanctions;
  - (b) the imposition of sanctions on a director, manager or similar officer of a licensing body or, where the body's affairs are managed by its members, on a member.
- (3) The regulations must include provision—
- (a) for determining whether there has been a failure to comply with a requirement or code of practice for the purposes of any provision made under sub-paragraph (1);
  - (b) for determining any sanction that may be imposed in respect of the failure to comply;
  - (c) for an appeal against a determination within paragraph (a) or (b).
- (4) A financial penalty imposed under sub-paragraph (2) must not be greater than £50,000.
- (5) The regulations may provide for a determination within sub-paragraph (3)(a) or (3)(b) to be made by the Secretary of State or by a person designated by the Secretary of State under the regulations.
- (6) The regulations may make provision for requiring a person to give the person by whom a determination within sub-paragraph (3)(a) falls to be made (the “adjudicator”) any information that the adjudicator reasonably requires for the purpose of making that determination.

## **6 Fees**

- 6
- (1) The Secretary of State may by regulations require a licensing body to which regulations under any other paragraph of this Schedule apply to pay fees to the Secretary of State.
  - (2) The aggregate amount of fees payable under the regulations must not be more than the cost to the Secretary of State of administering the operation of regulations under this Schedule.

## **7 General**

- 7
- (1) The power to make regulations under this Schedule includes in particular power—
    - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
    - (b) to make provision for bodies of a particular description, or carrying out activities of a particular description, not to be treated as licensing bodies for the purposes of requirements imposed under regulations under this Schedule;

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- (c) to make provision that applies only in respect of licensing bodies of a particular description, or only in respect of activities of a particular description;
    - (d) otherwise to make different provision for different purposes.
  - (2) Regulations under a paragraph of this Schedule may amend Part 1 or Part 2, or any other enactment or subordinate legislation passed or made before the paragraph in question comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
  - (3) The power to make regulations is exercisable by statutory instrument.
  - (4) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- 8 References in this Schedule to a licensing body are to a body that is a licensing body for the purposes of Chapter 7 of Part 1 or Chapter 2 of Part 2, and references to licensees are to be construed accordingly.”

## PART 2

### PERFORMERS’ RIGHTS

- 2 Schedule 2A to the Copyright, Designs and Patents Act 1988 (licensing of performers’ property rights) is amended as follows.
- 3 In the heading of the Schedule omit “property”.
- 4 In paragraph 1, after sub-paragraph (4) insert—
- “(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”
- 5 After paragraph 1 insert—

#### *“1A Power to provide for licensing of orphan rights*

- 1A (1) The Secretary of State may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where—
- (a) the performer’s consent would otherwise be required under that section, but
  - (b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.
- (2) The regulations may—
- (a) specify a person or a description of persons authorised to grant licences, or
  - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences.

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- (3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations must provide for any licence—
  - (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.

#### *1B Extended collective licensing*

- 1B
- (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.
  - (2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.
  - (3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
  - (4) The regulations must provide for any licence not to give exclusive rights.

#### *1C General provision about licensing*

- 1C
- (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.
  - (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
  - (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
  - (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
    - (a) the deduction of administrative costs;
    - (b) the period for which sums must be held;
    - (c) the treatment of sums after that period (as bona vacantia or otherwise).



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- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
  - (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
    - (a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;
    - (b) about maintenance of registers and access to them;
    - (c) permitting the use of a work for incidental purposes including an application or search;
    - (d) for a right conferred by section 205C to be treated as having been asserted under section 205D;
    - (e) for the payment of fees to cover administrative expenses.
- 1D
- (1) The power to make regulations includes power—
    - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
    - (b) to make transitional, transitory or saving provision;
    - (c) to make different provision for different purposes.
  - (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
  - (3) Regulations may make provision by reference to guidance issued from time to time by any person.
  - (4) The power to make regulations is exercisable by statutory instrument.
  - (5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- 6 In section 205A of the Copyright, Designs and Patents Act 1988, and in the italic heading before that section (licensing of performers' property rights), omit “property”.