

Draft Order laid before Parliament under section 23(2) of the Groceries Code Adjudicator Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No. XXXX

COMPETITION

**The Groceries Code Adjudicator (Permitted
Maximum Financial Penalty) Order 2015**

Made - - - - *****
Coming into force - - *6th April 2015*

The Secretary of State makes the following Order in exercise of the powers conferred by section 9(6) of the Groceries Code Adjudicator Act 2013⁽¹⁾.

As required by section 9(7) and (8) of the Groceries Code Adjudicator Act 2013, the Groceries Code Adjudicator has consulted such persons as the Groceries Code Adjudicator thinks appropriate and has made a recommendation as to the method for determining the amount that is the permitted maximum financial penalty that can be imposed by the Groceries Code Adjudicator under section 9(1) of that Act.

In accordance with section 9(9)(a) of that Act, the Secretary of State has had regard to the recommendation made by the Adjudicator.

In accordance with section 23(2) of that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015 and comes into force on 6th April 2015.

(2) In this Order “the Act” means the Groceries Code Adjudicator Act 2013.

Financial penalty: permitted maximum amount

2.—(1) For the purposes of section 9 of the Act (investigations: enforcement using financial penalties), the permitted maximum is 1% of the large retailer’s turnover.

(2) For that purpose, a large retailer’s turnover is to be calculated in accordance with articles 3 and 4.

⁽¹⁾ 2013 c.19.

Calculation of turnover

3.—(1) The turnover of a large retailer is the retailer’s applicable turnover for the business year preceding the date of the notice.

(2) Where the business year preceding the date of the notice did not equal twelve months, the turnover is the retailer’s applicable turnover for that business year divided by the number of months in that business year and multiplied by twelve.

(3) Where there was no preceding business year, the turnover is the applicable turnover for the twelve months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3) the large retailer has turnover for a period of less than twelve months, the turnover is the applicable turnover in that period divided by the number of months in that period and multiplied by twelve.

(5) In this article—

“applicable turnover” has the meaning given in article 4;

“business year” means a period of more than six months in respect of which a large retailer published accounts or, if no such accounts were published for the period, prepared accounts; and

“date of the notice” means the date on which the Adjudicator gave written notice to the large retailer under section 9(2) of the Act imposing the penalty in question.

Applicable turnover

4.—(1) For the purposes of article 3, the applicable turnover of a large retailer is the sum of—

(a) all amounts derived by the large retailer from the provision of goods and services falling within the large retailer’s ordinary activities in the United Kingdom; and

(b) all other amounts received by the large retailer in the course of the large retailer’s ordinary activities in the United Kingdom by way of gift, grant, subsidy or membership fee,

after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received.

(2) Amounts are to be calculated in conformity with generally accepted accounting principles and practices.

Date

Name
Minister for Employment Relations and
Consumer Affairs
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the method of determining the maximum financial penalty that the Groceries Code Adjudicator may impose on a large retailer under section 6 of the Groceries Code Adjudicator Act 2013 (“the Act”) for a breach of the Groceries Supply Code of Practice. That Code of Practice is set out in the Groceries (Supply Chain Practices) Market Investigation Order 2009 (“the 2009 Order”) The 2009 Order is one made by the Competition Commission under the Enterprise Act and can be found at www.gov.uk/gca. Section 9(1) of the Act provides that the amount of the penalty must not exceed the amount of the “permitted maximum”, and article 2 of this Order provides that the “permitted maximum” is 1% of the large retailer’s turnover, as calculated in accordance with articles 2 and 3. This is limited to turnover in the United Kingdom.

“Large retailer” is defined in section 22 of the Act. It means those retailers listed in Schedule 2 of the 2009 Order or one meeting the conditions set out at Article 4(1)(b) or 4(1)(c) of that Order, and includes a subsidiary of a designated retailer.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.