
DRAFT STATUTORY INSTRUMENTS

2019 No.

The State Aid (EU Exit) Regulations 2019

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the State Aid (EU Exit) Regulations 2019 and come into force on exit day.

(2) An amendment, repeal or revocation made by these Regulations has the same extent as the provision amended, repealed or revoked.

Interpretation

2.—(1) In these Regulations—

“agricultural aid” means aid for the production of and trade in agricultural products;

“Agricultural Block Exemption Regulation” or “ABER” means [Commission Regulation \(EU\) No 702/2014](#) of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;

“agricultural products” means the products of—

- (a) the soil, of stockfarming and of fisheries listed in Annex I to the TFEU; and
- (b) first-stage processing directly linked to the products in paragraph (a);

“aid grantor” means a person who plans to grant, or who has granted, aid;

“aid scheme” has the meaning given in Article 2(15) of the General Block Exemption Regulation;

“alteration to existing aid” means any change to existing aid, except for—

- (a) changes of a purely formal or administrative nature which cannot affect an evaluation of whether the aid could be approved; or
- (b) an increase in the original budget of an existing aid scheme by up to 20%;

“block exemption regulation” means—

- (a) the General Block Exemption Regulation;
- (b) the Agricultural Block Exemption Regulation; or
- (c) the Fisheries Block Exemption Regulation;

“CMA” means the Competition and Markets Authority;

“CMA statement of policy” means a statement of policy published by the CMA under Part 6;

“compliance date” means the date by which an aid grantor must comply with all or part of an enforcement order;

“confidential information” means—

- (a) commercial information whose disclosure the CMA thinks might significantly harm the legitimate business interests of the undertaking to which it relates;
- (b) information relating to the private affairs of an individual whose disclosure the CMA thinks might significantly harm the individual’s interests; or
- (c) information whose disclosure the CMA thinks is contrary to the public interest;

“the court” means—

- (a) in England and Wales or Northern Ireland, the High Court; and
- (b) in Scotland, the Court of Session;

“de minimis regulation” means—

- (a) [Commission Regulation \(EU\) No 360/2012](#) of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest;
- (b) [Commission Regulation \(EU\) No 1407/2013](#) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid;
- (c) [Commission Regulation \(EU\) No 1408/2013](#) of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector; or
- (d) [Commission Regulation \(EU\) No 717/2014](#) of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector;

“enforcement order” means an interim suspension order, an interim recovery order, a termination order or a recovery order made by the CMA under Part 4;

“existing aid” means—

- (a) aid schemes and individual aid which were put into effect before, and are still applicable after, the entry date;
- (b) aid schemes and individual aid which have been approved by the CMA under Part 3;
- (c) aid which is deemed to have been approved under regulation 9;
- (d) aid which is deemed to be existing aid under regulation 41; or
- (e) aid which was not aid at the time it was put into effect, but which became aid as a result of a change in the economic and legal framework of the relevant sector;

“existing aid scheme” means an aid scheme that is existing aid;

“Fisheries Block Exemption Regulation” or “FBER” means [Commission Regulation \(EU\) No 1388/2014](#) of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union;

“General Block Exemption Regulation” or “GBER” means [Commission Regulation \(EU\) No 651/2014](#) of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty;

“individual aid” means—

- (a) aid that is not awarded on the basis of an aid scheme; or
- (b) aid that is awarded on the basis of an aid scheme if the aid is required to be notified to the CMA under Article 108(3) of the TFEU;

“information” includes estimates and forecasts;

“interested party” means a person, undertaking or association of undertakings whose interests might be affected by the granting of aid, and may in particular include beneficiaries, competing undertakings and trade associations;

“limitation period” has the meaning given in regulation 41;

“misuse of aid” means aid used by a beneficiary in contravention of a CMA decision to approve aid;

“new aid” means all aid that is not existing aid, and includes individual aid, aid schemes and alterations to existing aid;

“properly submitted complaint” means a complaint sent to the CMA by an interested party in accordance with regulation 33(2);

“road and rail regulation”, except in Schedule 8, means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2017 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No. 1191/69 and 1107/70;

“Secretary of State guidance” means any guidance published by the Secretary of State under Part 6;

“SGEI decision” means Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest;

“TFEU” means the Treaty on the Functioning of the European Union;

“transport”, except in Schedule 4, means transport by rail, road and inland waterway;

“unlawful aid” means new aid that is granted in contravention of Article 108(3) of the TFEU; and

“working day” has the meaning given in section 34ZA(3) of the Enterprise Act 2002(1).

(2) In these Regulations, a reference to the CMA approving aid is a reference to the CMA approving aid under Article 93, 106(2) or 107(2) or (3) of the TFEU.

PART 2

Framework

State aid

3.—(1) In this regulation, the “state aid rights” are the rights, powers, liabilities, obligations, restrictions, remedies and procedures which continue to be recognised in domestic law by virtue of—

- (a) Articles 107(1) and 108(3) of the TFEU; and
- (b) section 4 of the European Union (Withdrawal) Act 2018.

(2) The state aid rights have effect as if—

- (a) Articles 107(1) and 108(3) of the TFEU were modified as set out in the second column of the Table in paragraph (4); and
- (b) they are subject to the conditions set out in the third column of the Table.

(1) 2002 c. 40; section 34ZA was inserted by paragraphs 1 and 4 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

(3) In the rest of these Regulations (except the first column of the Table in paragraph (4), regulation 65, paragraph 2(1)(c) of Schedule 6 and paragraphs 5(1)(a), 6(1) and 7(2)(c)(iii) of Schedule 8)—

- (a) a reference to Article 107(1) or Article 108(3) of the TFEU is a reference to that Article as it has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and paragraphs (1) and (2); and
- (b) a reference to another Article of the TFEU is a reference to the corresponding condition set out in the third column of the Table in paragraph (4).

(4) The Table is—

<i>Article of the TFEU</i>	<i>Modified form of Articles 107(1) and 108(3)</i>	<i>Conditions on modified Articles 107(1) and 108(3)</i>
Article 107(1)	Any aid granted by the state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the United Kingdom and the European Union, be prohibited unless it is approved in accordance with Article 108(3) of the TFEU.	
Article 108(3)	The CMA shall be notified of any plans to grant or alter aid. The aid grantor concerned shall not put its proposed measures into effect unless the aid is approved under Article 93, 106(2) or 107(2) or (3) of the TFEU.	
Article 93		The CMA shall approve aid if the aid meets the needs of coordination of transport or the aid represents reimbursement for the discharge of certain obligations inherent in the concept of a public service in respect of transport.
Article 106(2)		The CMA shall approve aid if— <ul style="list-style-type: none"> (a) the aid is for an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly; and (b) not approving the aid would obstruct the performance of the particular tasks assigned to the undertaking.
Article 107(2)		The CMA shall approve the following— <ul style="list-style-type: none"> (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination

<i>Article of the TFEU</i>	<i>Modified form of Articles 107(1) and 108(3)</i>	<i>Conditions on modified Articles 107(1) and 108(3)</i>
		related to the origin of the products concerned; and
		(b) aid to make good the damage caused by natural disasters or exceptional occurrences.
Article 107(3)		The CMA may approve the following— (a) aid to promote the economic development of an area that was, immediately before exit day, specified in Schedule 1 to the Assisted Areas Order 2014(2); (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of the United Kingdom; (c) aid to facilitate the development of certain economic activities or of an area in Northern Ireland or of an area that was, immediately before exit day, specified in Schedule 2 to the Assisted Areas Order 2014(3); and (d) aid to promote culture and heritage conservation.
Article 346(1)		The provisions of Articles 107(1) and 108(3) of the TFEU shall not preclude the application of the following rules— (a) the state shall not be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security; and (b) the state may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

Application and exemptions

4.—(1) The following are not prohibited under Article 107(1) of the TFEU and are exempt from the notification requirement in Article 108(3) of the TFEU—

- (a) agricultural aid granted in accordance with a provision specified in Schedule 1; and

(2) [S.I. 2014/1508](#), amended by [S.I. 2017/173](#).

(3) [S.I. 2014/1508](#), amended by [S.I. 2017/173](#).

- (b) aid granted in respect of an outstanding amount of a specified EU project in accordance with Schedule 2.
- (2) Aid granted in accordance with a de minimis regulation does not meet the criteria in Article 107(1) of the TFEU and is exempt from the notification requirement in Article 108(3) of the TFEU.
- (3) Aid granted in accordance with the following is deemed to be approved under Article 93, 106(2) or 107(2) or (3) of the TFEU (as appropriate) and is exempt from the notification requirement in Article 108(3) of the TFEU—
 - (a) the road and rail regulation;
 - (b) the SGEI decision; or
 - (c) a block exemption regulation.
- (4) The prohibition in Article 107(1) of the TFEU and the notification requirement in Article 108(3) of the TFEU are subject to regulation 57 (application of state aid framework in urgent cases).
- (5) Schedule 3, which relates to aid granted by Act of Parliament, has effect.

Approval of aid under Article 107(3)

- 5.—(1) The CMA may approve aid under Article 107(3) of the TFEU only if the CMA is satisfied that any adverse effects on trade and competition are justified by the objective of the aid.
- (2) In considering whether to approve aid under Article 107(3) of the TFEU, the CMA must have regard to any relevant CMA statement of policy and Secretary of State guidance.

Approval of aid under Article 93, 106(2) or 107(2)

- 6. In considering whether to approve aid under Article 93, 106(2) or 107(2) of the TFEU, the CMA must have regard to any relevant CMA statement of policy.

PART 3

Procedure

CHAPTER 1

Notified aid

Notification

- 7.—(1) An aid grantor must notify the CMA of plans to grant new aid by submitting a notification to the CMA that—
 - (a) is made in the specified form; and
 - (b) contains the specified information.
- (2) After receiving a notification, the CMA may request an aid grantor to send any necessary additional information within a set period.
- (3) The CMA may request information under this regulation more than once.
- (4) A notification is considered to be a complete notification if—
 - (a) the CMA notifies the aid grantor that the notification is a complete notification; or
 - (b) the CMA does not, within the relevant period, request an aid grantor to send any additional information.
- (5) In this regulation—

“relevant period” means a period of 40 working days starting with the first working day after receipt of a notification or receipt of any additional information requested under this regulation (as appropriate); and

“specified” means specified by the CMA in a notice published under regulation 55.

Examination of notification

8.—(1) The CMA must examine a complete notification and take one of the following decisions—

- (a) that the notified measure does not constitute aid;
- (b) to approve the aid; or
- (c) if the CMA is not satisfied that it can take a decision under sub-paragraph (a) or (b), to open an investigation in respect of the notified measure.

(2) The CMA must take a decision under paragraph (1) within a period of 40 working days starting with the first working day after the day on which the notification is considered to be a complete notification under regulation 7(4).

Failure to take decision

9.—(1) If the CMA does not take a decision in accordance with regulation 8, the notified measure is deemed to be approved by the CMA.

(2) However, the aid grantor must not implement the measure unless—

- (a) the aid grantor notifies the CMA that it intends to implement the measure; and
- (b) the CMA does not take a decision referred to in paragraph (3) within a period of 15 working days starting with the first working day after the day on which the aid grantor notifies the CMA under sub-paragraph (a).

(3) If the aid grantor notifies the CMA under paragraph (2)(a), the CMA may take a decision under regulation 8(1) in respect of the measure.

(4) If the CMA takes a decision referred to in paragraph (3) within the period referred to in paragraph (2)(b), the decision applies as if the notified measure had not been deemed to be approved under paragraph (1).

Publicity

10.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 8(1)—

- (a) the decision;
- (b) the reasons for the decision; and
- (c) in relation to a decision taken under regulation 8(1)(c), the period during which representations may be sent to the CMA by the aid grantor and interested parties.

(2) The period referred to in paragraph (1)(c) is 20 working days starting with the first working day after the day on which the reasons for the decision are published by the CMA.

(3) The CMA must send to the aid grantor any representations it receives from interested parties under this regulation, and any market information it receives from a person under Chapter 5, except that the CMA may withhold—

- (a) any representations or market information to the extent that they contain confidential information; and

(b) the identity of an interested party or person who sent market information (as appropriate) if requested to do by the interested party or person on grounds of potential damage.

(4) The aid grantor may, in response to representations made by interested parties or market information provided under Chapter 5, send representations to the CMA within a period of 20 working days starting with the first working day after the day on which the aid grantor receives the representations or information.

Notified aid investigation

11.—(1) If the CMA decides to open an investigation under regulation 8(1)(c), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide—

(a) whether the notified measure constitutes aid; and

(b) if so, whether to approve the aid.

(3) The CMA may consider the notified measure as modified by the aid grantor if the CMA considers it appropriate to do so.

Publication of decision after notified aid investigation

12.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 11—

(a) the decision; and

(b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

Time limit for notified aid investigation

13.—(1) The CMA must use its best endeavours to take a decision under regulation 11 within a period of 18 months starting with the date on which the decision to open the investigation was taken.

(2) If the CMA has not taken a decision within the period referred to in paragraph (1), the aid grantor may request the CMA to take a decision on the basis of the information available to the CMA.

(3) If the aid grantor makes a request under paragraph (2), the CMA must take a decision under regulation 11 within a period of 8 weeks starting with the day after the day on which the CMA receives the request.

Withdrawal of notification

14.—(1) An aid grantor may withdraw a notification at any time before the CMA takes a decision under regulation 11.

(2) If an aid grantor withdraws a notification—

(a) the CMA must stop its examination or investigation (as appropriate); and

(b) the CMA is not required to take or publish any further decisions in respect of the notification.

(3) A notification is deemed to be withdrawn if—

(a) the CMA makes a request for additional information under regulation 7(2); and

(b) within the set period—

(i) the aid grantor does not send the information; or

- (ii) the aid grantor does not notify the CMA that the information does not exist.
- (4) The CMA must notify the aid grantor if a notification is deemed to be withdrawn.

CHAPTER 2

Unlawful aid

Examination of alleged unlawful aid

15.—(1) The CMA may on its own initiative examine information from any source regarding alleged unlawful aid and may, after an examination, take a decision under paragraph (5).

(2) The CMA must examine any properly submitted complaint regarding alleged unlawful aid and must, after an examination, take a decision under paragraph (5).

(3) If the CMA reasonably requires information for the purpose of taking a decision under paragraph (5), the CMA may request the aid grantor to send the information within a set period.

(4) If the aid grantor does not send the information within the set period, the CMA may take the decision on the basis of the information available to the CMA.

(5) The decisions referred to in paragraphs (1) and (2) are—

- (a) that the alleged unlawful aid does not constitute unlawful aid;
- (b) to approve the aid; or
- (c) if the CMA is not satisfied that it can take a decision under sub-paragraph (a) or (b), to open an investigation in respect of the alleged unlawful aid.

(6) If the CMA approves the aid, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU.

Publicity

16. Regulation 10 (publicity) applies to a decision taken under regulation 15(5) as it applies to a decision taken under regulation 8(1).

Unlawful aid investigation

17.—(1) If the CMA decides to open an investigation under regulation 15(5)(c), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide—

- (a) whether the alleged unlawful aid constitutes unlawful aid; and
- (b) if so, whether to approve the aid.

(3) The CMA may consider the alleged unlawful aid as modified by the aid grantor if the CMA considers it appropriate to do so.

(4) If the CMA approves the aid, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU.

Publication of decision after unlawful aid investigation

18.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 17—

- (a) the decision; and
- (b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

CHAPTER 3

Misuse of aid

Examination of alleged misuse of aid

19.—(1) The CMA may on its own initiative examine information from any source regarding alleged misuse of aid and may, after an examination, decide whether there has been a misuse of aid.

(2) The CMA must examine any properly submitted complaint regarding alleged misuse of aid and must, after an examination, decide whether there has been a misuse of aid.

(3) If the CMA reasonably requires information for the purpose of taking a decision under this regulation, the CMA may request the aid grantor to send the information within a set period.

(4) If the aid grantor does not send the information within the set period, the CMA may—

(a) take a decision under this regulation on the basis of the information available to the CMA, including any information obtained in accordance with Schedule 4; or

(b) request the beneficiary to send the information within a set period.

(5) If the beneficiary does not send the information within the set period, the CMA may take a decision under this regulation on the basis of the information available to the CMA, including any information obtained in accordance with Schedule 4.

(6) If the CMA decides there has been a misuse of aid, the CMA must open an investigation in respect of the misused aid.

(7) Schedule 4, which relates to powers of entry in misuse of aid examinations, has effect.

Publicity

20. Regulation 10 (publicity) applies to a decision taken under regulation 19(6) as it applies to a decision taken under regulation 8(1)(c).

Misuse of aid investigation

21.—(1) If the CMA decides to open an investigation under regulation 19(6), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide whether to approve the aid.

(3) The CMA may consider the aid as modified by the aid grantor if the CMA considers it appropriate to do so.

(4) If the CMA approves the aid, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU.

Publication of decision after misuse of aid investigation

22.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 21—

(a) the decision; and

(b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

CHAPTER 4

Existing aid schemes

Review of existing aid scheme

23.—(1) The CMA may review an existing aid scheme for the purpose of deciding whether the scheme could be approved by the CMA if the aid was notified under Chapter 1 of this Part.

(2) If the CMA reasonably requires information for the purpose of this regulation, the CMA may request the aid grantor to send the information within a set period.

(3) If the aid grantor does not send the information within the set period, the CMA may take a decision under this regulation on the basis of the information available to the CMA.

(4) If the CMA considers that an existing aid scheme could not be approved by the CMA were the aid to be notified under Chapter 1 of this Part, the CMA must—

- (a) notify the aid grantor of its preliminary view; and
- (b) give the aid grantor an opportunity to send representations within a period of 20 working days starting with the first working day after the day on which the CMA notifies the aid grantor under sub-paragraph (a).

Proposal for appropriate modifications

24.—(1) The CMA must send a recommendation to an aid grantor proposing appropriate modifications to an existing aid scheme if both of the following apply—

- (a) the CMA notifies the aid grantor, under regulation 23(4), of its preliminary view that an existing aid scheme could not be approved by the CMA were the aid to be notified under Chapter 1 of this Part; and
- (b) after considering any representations sent by the aid grantor, the CMA concludes that the existing aid scheme could not be approved by the CMA were the aid to be notified under Chapter 1 of this Part.

(2) A recommendation must include a time period within which the recommendation must be implemented.

(3) A recommendation may, in particular, propose—

- (a) substantive amendment of the aid scheme;
- (b) the introduction of reporting requirements; or
- (c) the termination of the aid scheme.

Consequences of proposal for appropriate modifications

25.—(1) If the aid grantor accepts the CMA's recommendation—

- (a) the aid grantor must notify the CMA; and
- (b) the aid grantor must implement the CMA's recommendation within the relevant time period.

(2) The CMA must open an investigation in respect of the existing aid scheme if—

- (a) the aid grantor—
 - (i) does not accept the CMA's recommendation; or
 - (ii) accepts the CMA's recommendation but fails to implement the CMA's recommendation within the relevant time period; and

- (b) the CMA considers that implementation of the recommendation is still necessary.

Publicity

26. Regulation 10 (publicity) applies to a decision taken under regulation 25(2) as it applies to a decision taken under regulation 8(1)(c).

Existing aid scheme investigation

27.—(1) If the CMA decides to open an investigation under regulation 25(2), the CMA must carry out such investigations as it considers appropriate to take a decision under paragraph (2).

(2) The CMA must, after carrying out an investigation, decide whether the aid scheme could be approved if the aid was notified under Chapter 1 of this Part.

(3) The CMA may consider the existing aid scheme as modified by the aid grantor if the CMA considers it appropriate to do so.

Publication of decision after existing aid scheme investigation

28.—(1) The CMA must publish the following as soon as is reasonably practicable after taking a decision under regulation 27—

- (a) the decision; and
- (b) the reasons for the decision.

(2) The CMA must notify any interested party who sent representations that the decision has been published.

Time limit for existing aid scheme investigation

29.—(1) The CMA must use its best endeavours to take a decision under regulation 27 within a period of 18 months starting with the date on which the decision to open the investigation was taken.

(2) If the CMA has not taken a decision within the period referred to in paragraph (1), the aid grantor may request the CMA to take a decision on the basis of the information available to the CMA.

(3) If the aid grantor makes a request under paragraph (2), the CMA must take a decision under regulation 27 within a period of 8 weeks starting with the day after the day on which the CMA receives the request.

CHAPTER 5

Market information

Request for market information

30.—(1) This regulation applies if the CMA opens an investigation under regulation 8(1)(c), 15(5)(c) or 19(6).

(2) The CMA may request a person (other than the aid grantor) to send market information to the CMA within a set period if—

- (a) any information provided by the aid grantor is not sufficient to enable the CMA to take a decision under regulation 11, 17 or 21 (as appropriate); and
- (b) the CMA reasonably requires the market information for the purpose of taking a decision under regulation 11, 17 or 21 (as appropriate).

(3) A request under paragraph (2) must be sent to the person concerned and specify—

- (a) the market information that is requested;

- (b) the legal basis for requesting the information; and
 - (c) the possible consequences of providing incorrect or misleading information in response to the request.
- (4) If the person is, or will be, a beneficiary of the aid, the CMA must give the aid grantor reasonable notice before making a request under paragraph (2).
- (5) If the CMA makes a request under paragraph (2), the CMA must—
- (a) send a copy of the request to the aid grantor at the same time as sending it to the person; and
 - (b) notify the aid grantor why the information has been requested.

Market information order

31.—(1) If a person does not comply with a request for market information under regulation 30, the CMA may make a market information order requiring the person to send the market information within a set period.

- (2) A market information order must be sent to the person concerned and specify—
- (a) the market information that must be provided;
 - (b) the form and manner in which the information must be provided;
 - (c) the date by which the information must be provided;
 - (d) the legal basis for requiring the information; and
 - (e) the possible consequences of not complying with the order.
- (3) However, a person is not required to provide information that—
- (a) the person could not be compelled to provide in evidence in civil proceedings before the court; or
 - (b) is not at the disposal of the person.
- (4) If the CMA makes a market information order, the CMA must—
- (a) send a copy of the order to the aid grantor at the same time as sending it to the person; and
 - (b) notify the aid grantor why the order has been made.

Enforcement of market information requests and orders

32.—(1) The CMA may impose a penalty on a person in accordance with Schedule 5 if the CMA considers that the person has, without reasonable excuse—

- (a) provided incorrect or misleading information in response to a request for market information made under regulation 30(2);
 - (b) provided incorrect, incomplete or misleading information in response to a market information order made under regulation 31; or
 - (c) otherwise failed to comply with a requirement of a market information order made under regulation 31.
- (2) The CMA must have regard to the statement of policy on penalties published under Schedule 5 in deciding whether and, if so, how to proceed under paragraph (1).
- (3) If a person fails to comply with a request for market information or a market information order, the CMA may take a decision under regulation 11, 17 or 21 (as appropriate) on the basis of the information available to the CMA.
- (4) The CMA must not impose a penalty under paragraph (1) if more than 4 weeks have passed since the date on which the CMA published its decision for the investigation concerned.

(5) However, paragraph (4) does not apply in relation to any variation or substitution of the penalty which is permitted by Schedule 5.

(6) Schedule 5, which relates to administrative penalties, has effect.

CHAPTER 6

General

Complaints

33.—(1) An interested party may send a complaint to the CMA regarding alleged unlawful aid or alleged misuse of aid.

(2) A complaint must display reasonable grounds to show the existence of unlawful aid or misuse of aid and—

- (a) be in the specified form; and
- (b) contain the specified information.

(3) If the CMA considers that a complaint does not comply with paragraph (2), the CMA must—

- (a) notify the interested party; and
- (b) request that the interested party send further representations to the CMA within a set period.

(4) If the interested party does not send further representations within the set period—

- (a) the complaint is deemed to be withdrawn; and
- (b) the CMA must notify the interested party that the complaint is deemed to be withdrawn.

(5) If a complaint complies with paragraph (2) and the CMA is examining the complaint under regulation 15(2) or 19(2), the CMA must keep the aid grantor concerned regularly informed of the progress and outcome of the complaint.

(6) In this regulation—

“set period” means 20 working days starting with the first working day after the day on which the CMA notifies the interested party under paragraph (3)(a); and

“specified” means specified by the CMA in a notice published under regulation 55.

Decision based on incorrect information

34.—(1) This regulation applies if—

- (a) the CMA takes a specified decision; and
- (b) the CMA subsequently considers that—
 - (i) the CMA may have been provided with incorrect or misleading information during the relevant examination or investigation; and
 - (ii) the incorrect or misleading information may have been a determining factor for the decision.

(2) The CMA may open an investigation for the purpose of deciding—

- (a) whether to revoke the specified decision; and
- (b) if so, what replacement decision to take.

(3) If the CMA opens an investigation and decides to revoke a specified decision that was a decision that a measure does not constitute aid—

- (a) taken under regulation 8(1)(a) or 11(2), regulations 11 and 12 apply as if the investigation was an investigation opened under regulation 8(1)(c);
 - (b) taken under regulation 15(5)(a) or 17(2), regulations 17 and 18 apply as if the investigation was an investigation opened under regulation 15(5)(c).
- (4) If the CMA opens an investigation and decides to revoke a specified decision that was a decision to approve aid—
- (a) taken under regulation 8(1)(b) or 11(2), regulations 11 and 12 apply as if the investigation was an investigation opened under regulation 8(1)(c);
 - (b) taken under regulation 15(5)(b) or 17(2), regulations 17 and 18 apply as if the investigation was an investigation opened under regulation 15(5)(c);
 - (c) taken under regulation 21(2), regulations 21 and 22 apply as if the investigation was an investigation opened under regulation 19(6).
- (5) In this chapter, “specified decision” means a decision taken by the CMA—
- (a) that a measure does not constitute aid under regulation 8(1)(a), 11(2), 15(5)(a) or 17(2); or
 - (b) to approve aid under regulation 8(1)(b), 11(2), 15(5)(b), 17(2) or 21(2).

Approvals

35. If the CMA takes a decision to approve aid under regulation 8(1)(b), 11(2), 15(5)(b), 17(2) or 21(2), the decision may include—

- (a) conditions to which the approval is subject; and
- (b) reporting obligations.

Timing for publication of decisions

36.—(1) This regulation applies if the CMA is required to publish a decision and the reasons for the decision under—

- (a) regulation 10 (including as applied by regulations 16, 20 and 26); or
- (b) regulation 12, 18, 22 or 28.

(2) The CMA does not need to publish the reasons at the same time as the relevant decision if it is not reasonably practicable to do so.

(3) The CMA must notify the aid grantor of the decision and the reasons for the decision in advance of publication to provide an opportunity for the aid grantor to indicate whether it considers that the CMA should treat any information in the decision or the reasons as confidential information.

PART 4

Enforcement

Interim suspension order

37.—(1) If the CMA opens an investigation under regulation 15(5)(c) (unlawful aid) or 19(6) (misuse of aid), the CMA may make an interim suspension order requiring the aid grantor to suspend the aid.

(2) An interim suspension order may require aid to be suspended until the CMA decides whether to approve the aid.

(3) The CMA must give the aid grantor an opportunity to send comments before making an interim suspension order.

Interim recovery order

38.—(1) The CMA may make an interim recovery order requiring the aid grantor to take all necessary measures to provisionally recover alleged unlawful aid and interest payable on the aid if—

- (a) the CMA opens an investigation under regulation 15(5)(c) (unlawful aid);
- (b) the CMA considers that—
 - (i) according to established practice, the measure concerned constitutes aid;
 - (ii) there is an urgency to act; and
 - (iii) there is a serious risk of substantial and irreparable damage to a competitor of the aid beneficiary; and
- (c) the limitation period for the aid has not expired.

(2) After the aid grantor recovers the aid and interest, regulation 13 applies as if references to regulation 11 were references to regulation 17.

(3) The CMA must give the aid grantor an opportunity to send comments before making an interim recovery order.

Termination order

39. If the CMA takes any of the following decisions, the CMA must make a termination order requiring the aid grantor to terminate, modify or otherwise bring to an end the aid—

- (a) a decision under regulation 17 (unlawful aid) or 21 (misuse of aid) not to approve aid; or
- (b) a decision under regulation 27 (existing aid scheme) that an existing aid scheme could not be approved.

Recovery order

40.—(1) If the CMA takes a decision under regulation 17 (unlawful aid) or 21 (misuse of aid) not to approve aid, the CMA must make a recovery order requiring the aid grantor to take all necessary measures to recover the aid and interest payable on the aid from the beneficiary.

- (2) However, the CMA must not make a recovery order if—
 - (a) making the order would be contrary to the protection of a legitimate expectation created by the CMA; or
 - (b) the limitation period for the aid has expired.
- (3) A recovery order may, but is not required to, specify the amount of aid to be recovered.

Limitation period

41.—(1) The limitation period for aid is a period of ten years starting with the day on which the aid was granted to the beneficiary.

(2) If the CMA has opened an investigation under regulation 8(1)(c), 15(5)(c) or 19(6) in respect of the aid, the period in paragraph (1) is suspended until the investigation is completed or otherwise ended.

(3) If a decision of the CMA in relation to the aid is the subject to judicial review proceedings (including any appeals), the period in paragraph (1) is suspended for the duration of the proceedings.

(4) If the period in paragraph (1) includes any period before exit day, Article 17(2) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (as it had effect immediately before exit day), so far as it makes provision for interruptions and suspensions of limitation periods, applies to that pre-exit day period.

(5) If the limitation period for unlawful aid or misused aid expires, the aid is deemed to be existing aid.

Information provisions in enforcement order

42. The CMA may, in an enforcement order, require an aid grantor to send information to the CMA setting out how the aid grantor plans to comply with the order.

Time to comply with enforcement order

43.—(1) The CMA must—

- (a) send any relevant enforcement order to the aid grantor concerned; and
 - (b) specify a compliance date in the order.
- (2) The CMA may specify different compliance dates for different parts of the order.
- (3) The CMA may extend a compliance date if—
- (a) the aid grantor sends a request for an extension before the compliance date;
 - (b) serious difficulties prevent the aid grantor from complying with the order by the compliance date; and
 - (c) the CMA considers the serious difficulties provide an appropriate justification for the extension.
- (4) If a compliance date is extended, the new date is to be treated as the compliance date.

Recovery of aid

44.—(1) If the CMA makes a recovery order or an interim recovery order—

- (a) the aid grantor must notify the beneficiary of the order;
 - (b) the aid grantor must take all necessary measures to recover the aid and interest payable on the aid from the beneficiary; and
 - (c) the aid grantor has a right to recover the aid and interest payable on the aid from the beneficiary.
- (2) Interest payable on the aid is calculated in accordance with regulations 58 and 59.
- (3) In any proceedings that rely on the right in paragraph (1)(c), it is a defence for the beneficiary to show that—
- (a) recovery of the aid would be contrary to the protection of a legitimate expectation created by the CMA; or
 - (b) the limitation period for the aid had expired at the time the recovery order was made by the CMA.

Compliance with enforcement order

45.—(1) An aid grantor must comply with an enforcement order that is sent to the aid grantor.

(2) If an aid grantor does not comply with an enforcement order by the compliance date, the CMA must certify in writing to the court that the aid grantor has failed to comply with the order.

(3) However, the CMA must not certify that an aid grantor has failed to comply with an order if the CMA considers that it is impossible for the aid grantor to comply with the order.

(4) If a failure to comply is certified under paragraph (2), the court may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the aid grantor, and after hearing any statement that may be offered in defence, deal with the aid grantor as if it had committed a contempt of court.

PART 5

Monitoring and reporting

Monitoring

46.—(1) The CMA may monitor compliance by aid grantors with these Regulations and any CMA decision taken under these Regulations.

(2) The monitoring powers conferred on the CMA under this Part are without prejudice to any other powers of the CMA.

Information requests for monitoring

47.—(1) If the CMA reasonably requires information for the purpose of monitoring compliance under this Part, the CMA may request an aid grantor to send the information within a set period.

(2) The CMA may take into account any information provided, or a failure to comply with a request, for the purpose of taking any relevant decision under Part 3 or 4.

Annual reports for existing aid schemes

48.—(1) An aid grantor must send an annual report to the CMA in relation to existing aid schemes of the aid grantor for each calendar year by the specified date.

(2) The annual report must—

- (a) be in the specified form;
- (b) contain the specified content; and
- (c) cover all existing aid schemes of the aid grantor, unless the aid scheme has specific reporting obligations attached to the approval of the scheme.

(3) An annual report may contain estimated figures.

(4) However, if an aid grantor includes estimated figures in an annual report, the aid grantor must send the actual figures with the report in the following year.

(5) If an aid grantor fails to send a report by the specified date, fails to send a report in accordance with paragraph (2) or fails to provide actual figures in accordance with paragraph (4), the CMA may take this into account when deciding whether to review an existing aid scheme under Chapter 4 of Part 3.

(6) For the year 2019, an annual report is required to cover only the period on and after exit day.

(7) In this regulation, “specified” means specified by the CMA in a notice published under regulation 55.

Publication of CMA annual report

49. The CMA must publish an annual report for each year summarising the content of annual reports received under regulation 48 in respect of that year.

Monitoring and reporting of aid that is exempt from notification

50. Schedule 6, which relates to monitoring and reporting of aid that is exempt from notification, has effect.

PART 6

Statements of policy, notices and guidance

CMA statements of policy on exit day

51.—(1) The CMA must, on or before exit day, publish as statements of policy the English language versions of the guidance listed in the Table in Schedule 7 (as that guidance had effect immediately before exit day).

(2) However, if any guidance listed in the Table in Schedule 7 ceases to have effect before exit day, any references to that guidance in the Table are to be read as references to any successor guidance that does have effect immediately before exit day.

(3) The CMA may, before publishing a statement of policy under paragraph (1), make amendments in accordance with regulations 53 and 54 as if the statement of policy had already been published.

(4) In this regulation, “guidance” means guidelines, frameworks, notices and communications.

Other CMA statements of policy

52. The CMA may publish a statement of policy on—

- (a) the CMA’s discretion to approve aid under Article 107(3) of the TFEU;
- (b) the application of Articles 93, 106(2) and 107(2) of the TFEU; and
- (c) the method for setting reference and discount rates.

Amendments to CMA statements of policy

53.—(1) The CMA may amend or revoke a statement of policy published under this Part.

(2) The CMA must publish the amended version of the statement of policy or a notice that the statement of policy has been revoked.

(3) However, the CMA may not revoke the statement of policy on the revision of the method for setting the reference and discount rates unless the CMA publishes a successor statement of policy.

Consent

54.—(1) Before publishing a statement of policy under regulation 52 or amending or revoking a statement of policy under regulation 53, the CMA must obtain the consent of the Secretary of State.

(2) Any consent provided by the Secretary of State before exit day may be treated by the CMA and the Secretary of State as having been given under this regulation for the purposes of paragraph (1).

Notices

55.—(1) The CMA must, on or before exit day, publish a notice on—

- (a) the form and content of notifications for the purposes of regulation 7;
- (b) the form and content of complaints for the purposes of regulation 33;
- (c) the form, content and date for the submission of annual reports under regulation 48;
- (d) the form and summary information for the purposes of paragraph 1 of Schedule 6; and
- (e) the form, information and date for submission of annual reports under paragraph 3 of Schedule 6.

(2) Before publishing a notice under paragraph (1)(c), the CMA must consult the Secretary of State.

(3) Any consultation with the Secretary of State carried out by the CMA before exit day may be treated by the CMA and the Secretary of State as consultation carried out under this regulation for the purposes of paragraph (2).

Secretary of State guidance

56.—(1) The Secretary of State must publish guidance relating to the approval of aid by the CMA under Article 107(3) of the TFEU.

(2) Before publishing guidance under paragraph (1), the Secretary of State must consult the devolved authorities and the CMA.

(3) Any consultation with the devolved authorities or the CMA carried out by the Secretary of State before exit day may be treated by the Secretary of State, the devolved authorities and the CMA as consultation carried out under this regulation for the purposes of paragraph (2).

PART 7**General and final provisions****CHAPTER 1****General provisions****Application of state aid framework in urgent cases**

57.—(1) This regulation applies to aid that is granted to—

- (a) remedy a serious disturbance in the economy of the United Kingdom;
- (b) preserve financial stability; or
- (c) prevent serious social hardship.

(2) Notwithstanding the prohibition in Article 107(1) of the TFEU and the notification requirement in Article 108(3) of the TFEU, if due to urgent and exceptional circumstances it is not possible to obtain CMA approval for the aid before it is required to be granted, the aid grantor may grant the aid in accordance with this regulation.

(3) Before granting the aid, the aid grantor must—

- (a) inform the CMA;
- (b) have regard to any relevant CMA statement of policy; and
- (c) consider that the aid is capable of being approved by the CMA under any such statement of policy.

(4) As soon as practicable after granting the aid, the aid grantor must notify the aid to the CMA in accordance with regulation 7.

(5) Regulations 8 to 13 apply to a notification referred to in paragraph (4), and—

- (a) if the CMA approves the aid under regulation 8 or 11, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU;
- (b) if the CMA opens an investigation in respect of the aid under regulation 8(1)(c), the CMA may make an interim suspension order or an interim recovery order in accordance with Part 4 as if the investigation had been an investigation opened under regulation 15(5)(c); and
- (c) if the CMA takes a decision not to approve the aid under regulation 11, the CMA must make a termination order and a recovery order in respect of the aid in accordance with Part 4 as if the decision to not approve the aid had been taken under regulation 17.

Interest rate for recovery of aid

58.—(1) The CMA must, for each calendar year, set and publish the recovery interest rate that is to be applied for the purpose of calculating the amount of interest payable under regulation 44.

(2) The CMA must set and publish the recovery interest rate—

- (a) for the year 2019, on or before exit day; and
- (b) for each subsequent year, on or before 1 January of that year.

(3) The CMA must also publish the recovery interest rate set by the CMA for all previous years at the same time as publishing the rate for the current year under paragraph (2).

(4) The CMA must set the recovery interest rate by—

- (a) calculating the base rate in accordance with the interest rate methodology; and
- (b) adding one percentage point to the base rate.

(5) If, during a year, the average base rate calculated over the previous three months deviates more than 15% from the base rate referred to in paragraph (4)(a), the CMA must set and publish a new rate for the remainder of the year that—

- (a) is calculated by taking that average base rate and adding one percentage point; and
- (b) takes effect from the first day of the second month following the months used for the calculation.

(6) In this regulation, the “interest rate methodology” means the methodology included in the CMA statement of policy on the revision of the method for setting the reference and discount rates published under Part 6, or any successor statement of policy.

Method for applying interest rate

59.—(1) This regulation applies for the purpose of calculating the amount of interest payable under regulation 44.

(2) Interest is charged at the recovery interest rate from the date on which the aid was granted to the beneficiary to the date on which the aid is fully recovered.

(3) If the period in paragraph (2) is less than 12 months, the interest rate applied is the recovery interest rate set by the CMA as at the date on which the aid was granted to the beneficiary.

(4) If the period in paragraph (2) is 12 months or more—

- (a) the interest rate applied in the first 12 month period is the recovery interest rate set by the CMA as at the date on which the aid was granted to the beneficiary;

- (b) the interest rate applied for each subsequent 12 month period is the recovery interest rate set by the CMA as at the date on which the relevant subsequent 12 month period starts; and
 - (c) the interest is applied on a compound basis, added at yearly intervals.
- (5) If the period in paragraph (2) includes a period before exit day and a period on and after exit day, the period is split into two parts for the purposes of applying interest rates under this regulation and—
- (a) for the part before exit day, paragraphs (3) and (4) apply but references to the recovery interest rate set by the CMA are to be read as references to the recovery interest rate fixed by the Commission; and
 - (b) for the part on and after exit day, paragraphs (3) and (4) apply.
- (6) In this regulation, “recovery interest rate fixed by the Commission” means the interest rate fixed by the Commission under article 9(1) of [Commission Regulation \(EC\) No 794/2004](#) of 21 April 2004 implementing Council Regulation [\(EC\) No 659/1999](#) laying down detailed rules for the application of Article 93 of the EC Treaty (as it had effect immediately before exit day).

Variation of time periods

- 60.**—(1) The CMA and the aid grantor may agree to extend any of the following time periods—
- (a) a period in regulation 7(2) (notification);
 - (b) a period in regulation 8(2) (examination of notification); and
 - (c) a period in regulation 15(3), 19(3) or 23(2) (requests for information).
- (2) The CMA may extend any of the following time periods if the CMA considers it appropriate to do so—
- (a) a period in regulation 10(2) or (4) (time for representations), including as those provisions are applied by regulations 16, 20 and 26;
 - (b) a period in regulation 23(4)(b) (time for representations); and
 - (c) a period in regulation 33(3) (complaints).
- (3) The CMA and the beneficiary may agree to extend a time period in regulation 19(4)(b) (requests for information).

Service of documents

61. Section 126 of the Enterprise Act 2002 applies in relation to the service of documents and notices under these Regulations as it applies to the service of documents and notices under Part 3 of that Act.

Further publicity requirements

- 62.**—(1) The CMA must publish—
- (a) notice of any extension under regulation 60(2)(a) or (b) of the period in which representations may be made;
 - (b) any recommendation issued by the CMA under regulation 24, if the aid grantor concerned accepts the recommendation;
 - (c) any enforcement order made by the CMA under Part 4; and
 - (d) notice of any failure by the CMA to take a decision referred to in regulation 9(3).
- (2) If the CMA is under a duty by virtue of paragraph (1) to publish the result of any action or decision, the CMA must also publish its reasons for the action or decision concerned.

(3) However, the CMA does not need to publish the reasons referred to in paragraph (2) at the same time as the result of the action or decision concerned if it is not reasonably practicable to do so.

(4) Before publishing information under paragraph (1)(b) or (c), the CMA must send a copy of the information to the aid grantor to provide an opportunity for the aid grantor to indicate whether it considers that the CMA should treat any of the information as confidential information.

Defamation

63. For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice, decision, recommendation or report made by the CMA in the exercise of any of its functions under these Regulations.

Confidential information

64.—(1) A person who sends information to the CMA under these Regulations, a block exemption regulation or the Financial Transparency (EC Directive) Regulations 2009 must indicate which information the person considers the CMA should treat as confidential information and the reasons for such confidentiality.

(2) If a person indicates that information should be treated as confidential information, the person must send a separate non-confidential version of the information to the CMA.

(3) If information must be provided by a certain deadline, the same deadline applies for providing the non-confidential version.

(4) If the CMA decides that information provided by a person and indicated as confidential is not to be treated as confidential information, the CMA must—

- (a) notify the person; and
- (b) if the CMA intends to disclose the information, give the person at least four weeks' notice before the disclosure.

CHAPTER 2

Final provisions

Revocations etc.

65.—(1) The following are revoked—

- (a) Annex 15 of the EEA agreement, insofar as it forms parts of domestic law on and after exit day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018;
 - (b) [Commission Regulation \(EC\) No 794/2004](#) of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
 - (c) Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
 - (d) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid; and
 - (e) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.
- (2) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—
- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
 - (b) are derived from—

- (i) Article 346(1) of the TFEU, so far as Article 346(1) relates to Article 107(1) or 108(3) of the TFEU;
- (ii) Article 61(1) or 62(1) of the EEA agreement; or
- (iii) Article 123 of the EEA agreement, so far as Article 123 relates to Article 61(1) or 62(1) of the EEA agreement,

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) on and after exit day.

Crown application

66. Nothing in these Regulations affects Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

Transitional and savings provisions

67. Schedule 8, which contains transitional and savings provisions, has effect.

Amendments to legislation

68.—(1) Schedule 9, which makes amendments to retained EU law, has effect.

(2) Schedule 10, which makes amendments to legislation, has effect.

Date

Name
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial
Strategy