
DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

COMPETITION

The State Aid (EU Exit) Regulations 2019

Made - - - - *****

Coming into force in accordance with regulation 1(1)

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The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018 a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

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(2) An amendment, repeal or revocation made by these Regulations has the same extent as the provision amended, repealed or revoked.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

(a) 2018 c. 16.

“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 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 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(a).

(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.

(a) 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).

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.

(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>
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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.	
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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.	
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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.
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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
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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—

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination 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(a);
- (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(b); 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

(a) S.I. 2014/1508, amended by S.I. 2017/173.

(b) S.I. 2014/1508, amended by S.I. 2017/173.

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
- (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.

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

Date

SCHEDULE 1

Regulation 4(1)

Agriculture and fisheries

Agriculture and fisheries

1. The following provisions are specified for the purposes of regulation 4(1)(a)—
- (a) Article 211 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007;
 - (b) Article 13 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing the rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009;
 - (c) Article 81 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005;
 - (d) Article 27 of Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provisions and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008; and
 - (e) Article 8 of Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council.

SCHEDULE 2

Regulation 4(1)

Specified EU projects

Specified EU projects

1.—(1) Aid granted in respect of an outstanding amount of a specified EU project is not prohibited under Article 107(1) of the TFEU and is exempt from the notification requirement in Article 108(3) of the TFEU.

- (2) A specified EU project is a project that—
- (a) bid for funding before exit day under—
 - (i) the Horizon 2020 programme or the FP7 programme;
 - (ii) the Connecting Europe Facility;
 - (iii) the Employment and Social Innovation programme;
 - (iv) the Euratom research and training programme;
 - (v) the Creative Europe Programme;
 - (vi) the Research Programme for the Research Fund for Coal and Steel; or
 - (vii) the Programme for the Environment and Climate Action or the LIFE+ Programme;and
 - (b) was selected before, on or after exit day to receive funding under the relevant programme or facility.

(3) The outstanding amount of a specified EU project is the difference between the amount of funding the project—

- (a) is selected to receive under the relevant programme or facility; and
- (b) had received under the relevant programme or facility as at exit day.

Interpretation

2.—(1) In this Schedule—

“Connecting Europe Facility” means the Connecting Europe Facility established by Article 1 of Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010(a);

“Creative Europe Programme” means the Creative Europe Programme for support to the European cultural and creative sectors established by Article 1 of Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC(b);

“Employment and Social Innovation programme” means the European Union Programme for Employment and Social Innovation established by Article 1 of Regulation (EU) 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation (“EaSI”) and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion(c);

“Euratom research and training programme” means—

- (a) the Research and Training Programme of the European Atomic Energy Community established by Article 1 of Council Regulation (Euratom) No 1314/2013 of 16 December 2013 on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 Framework Programme for Research and Innovation(d); and
- (b) any successor research and training programme established by the Council under Article 7 of the Euratom Treaty before exit day;

“FP7 programme” means the framework programme for community activities in the area of research and technological development adopted under Article 1 of Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013)(e);

“Horizon 2020 programme” means the Horizon 2020 programme established by Article 1 of Regulation (EU) 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC(f);

“LIFE+ Programme” means the financial instrument for the environment (LIFE+) established by Article 1 of Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+)(g);

“Programme for the Environment and Climate Action” means the LIFE programme established by Article 1 of Regulation (EU) 1293/2013 of the European Parliament and of the

(a) OJ No L 348, 20.12.13, p129.
(b) OJ No L 347, 20.12.13, p221.
(c) OJ No L 347, 20.12.13, p238.
(d) OJ No L 347, 20.12.13, p948.
(e) OJ No L 412, 30.12.06, p1.
(f) OJ No L 347, 20.12.13, p104.
(g) OJ No L 149, 9.6.07, p1.

Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007(a); and

“Research Programme for the Research Fund for Coal and Steel” means the programme adopted by Article 2 of Decision No 2008/376/EC of the Council of 29 April 2008 on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme(b).

(2) References in sub-paragraph (1) to a regulation or decision are to the regulation or decision as it has effect in EU law.

SCHEDULE 3

Regulation 4(5)

Aid granted by Act of Parliament

Interpretation

1.—(1) For the purposes of this Schedule, aid is granted by Act of Parliament if an Act makes provision that—

- (a) amounts to a grant of new aid; or
- (b) requires a grant of new aid by a Minister of the Crown or any other person.

(2) An Act does not require a grant of new aid if a power could be exercised, or a duty performed, in a way that would not amount to a grant of new aid.

Aid granted by Act of Parliament

2.—(1) If a Minister of the Crown requests that the CMA consider a proposal to grant aid by Act of Parliament, the CMA must prepare an advisory opinion in respect of the proposal.

(2) If the CMA is satisfied that a complaint sent to it by an interested party provides information sufficient to indicate that aid has been granted by an Act of Parliament, the CMA must prepare an advisory opinion in respect of the Act.

(3) The CMA may on its own initiative prepare an advisory opinion in respect of—

- (a) a proposal to grant aid by Act of Parliament; or
- (b) an Act of Parliament.

(4) However, sub-paragraph (2) does not apply if the CMA has already prepared an advisory opinion under this Schedule in respect of the relevant provisions of the Act or an earlier proposal related to the relevant provisions of the Act.

Investigation

3. In order to prepare an advisory opinion under this Schedule, the CMA may carry out such investigations as it considers appropriate.

Advisory opinion: proposals to grant aid

4.—(1) An advisory opinion in respect of a proposal to grant aid by Act of Parliament prepared in accordance with paragraph 2(1) or 2(3)(a) must—

- (a) advise if the proposal is a proposal to grant aid by Act of Parliament;

(a) OJ No L 347, 20.12.13, p185.

(b) OJ No L 130, 20.5.08, p7.

- (b) if the CMA advise that it is such a proposal, advise whether the proposal would be notifiable under Article 108(3) of the TFEU were it a proposal to grant the aid otherwise than by Act of Parliament;
- (c) if the CMA advise that it would be notifiable, advise whether the proposal would be likely (if notified in accordance with these Regulations) to be approved by the CMA; and
- (d) give reasons for the conclusions.

(2) In preparing its advisory opinion, the CMA may take account of plans to modify the proposal.

Advisory opinion: aid granted

5.—(1) An advisory opinion in respect of an Act prepared in accordance with paragraph 2(2) or 2(3)(b) must—

- (a) advise whether aid has been granted by Act of Parliament;
- (b) if the CMA advise that it has been, advise whether the aid would be notifiable under Article 108(3) of the TFEU were the aid granted otherwise than by Act of Parliament;
- (c) if the CMA advise that it would be notifiable, advise whether the aid would be likely (if notified in accordance with these Regulations) to be approved by the CMA; and
- (d) give reasons for the conclusions.

(2) In preparing its advisory opinion, the CMA may take account of plans to modify the aid.

Publicity

6.—(1) The CMA must publish an advisory opinion prepared under this Schedule.

(2) The CMA must send a copy of the advisory opinion to a Minister of the Crown in advance of publication to provide an opportunity for the Minister to indicate whether the Minister considers that the CMA should treat any information in the opinion as confidential information.

SCHEDULE 4

Regulation 19

Powers of entry in misuse of aid examinations

PART 1

Interpretation and application

Interpretation

1. In this Schedule—

“authorised officer” means an officer of the CMA who has been authorised in writing by the CMA to exercise powers under this Schedule;

“business premises” means premises (or any part of premises) not used as a dwelling;

“document” includes information recorded in any form;

“named officer” means an authorised officer named in a warrant issued under Part 3 of this Schedule;

“occupier”, in relation to business premises, means a person whom an authorised officer reasonably believes is the occupier of those premises;

“premises” includes any land or means of transport; and

“relevant document” means any document of a kind in respect of which an application under paragraph 6 is granted.

Application

2. This Schedule applies if—
- (a) the CMA is examining alleged misuse of aid by a beneficiary under regulation 19;
 - (b) the CMA has requested information from the aid grantor under regulation 19(3); and
 - (c) the aid grantor has not provided the information in accordance with that regulation.

PART 2

Entry without a warrant

Power to enter business premises without a warrant

3. An authorised officer may enter the business premises of a beneficiary to obtain information for the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary if the CMA is satisfied that—

- (a) there are reasonable grounds to suspect that there has been a misuse of aid by the beneficiary;
- (b) entry to the business premises of the beneficiary is necessary for the CMA to decide under regulation 19 whether there has been a misuse of aid by the beneficiary;
- (c) the suspected misuse of aid is sufficiently serious to justify entering the business premises of the beneficiary; and
- (d) there are reasonable grounds to suspect that there are on the business premises documents—
 - (i) the production of which has been requested under regulation 19(4)(b); and
 - (ii) which have not been produced as requested.

Safeguards

4.—(1) No authorised officer may enter business premises in the exercise of the powers under paragraph 3 unless the officer has given the occupier of the premises a written notice which—

- (a) gives at least two working days' notice of the intended entry;
- (b) indicates the subject matter and the purpose of the intended entry; and
- (c) indicates the nature of the offences created by paragraph 15.

(2) The power of entry conferred by paragraph 3 is to be exercised by the authorised officer on the production of their authorisation.

(3) The power of entry conferred by paragraph 3 may be exercised only at a reasonable hour.

Associated powers

5. An authorised officer entering business premises in exercise of the powers under paragraph 3 may—

- (a) take with the officer such equipment as appears to the officer to be necessary;
- (b) require any person on the premises—
 - (i) to produce any document which the officer considers relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary; and
 - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person on the premises to state, to the best of the person's knowledge and belief, where any document referred to in sub-paragraph (b) is to be found;

- (d) take copies of any document which is produced;
- (e) require any information which is stored in any electronic form and is accessible from the premises and which the officer considers relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible or from which it can be readily be produced in a visible and legible form; and
- (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which the officer considers relates to any matter relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary.

PART 3

Entry with a warrant

Power to enter business premises with a warrant

6.—(1) On an application made to it by the CMA, the court may issue a warrant if it is satisfied that—

- (a) there are reasonable grounds to suspect that there has been a misuse of aid by the beneficiary;
- (b) entry to the business premises of the beneficiary is necessary for the CMA to decide under regulation 19 whether there has been a misuse of aid by the beneficiary;
- (c) the suspected misuse of aid is sufficiently serious to justify entering the business premises of the beneficiary; and
- (d) the requirements in sub-paragraph (2) or (3) are met.

(2) The requirements of this sub-paragraph are met if there are reasonable grounds to suspect that—

- (a) there are on the business premises documents which the CMA has the power under regulation 19(4)(b) to request for the purposes of deciding whether there has been a misuse of aid; and
- (b) if the documents were requested under regulation 19(4)(b), they would not be produced but would be concealed, removed, tampered with or destroyed.

(3) The requirements of this sub-paragraph are met if there are reasonable grounds to suspect that there are on the business premises documents—

- (a) the production of which has been requested under regulation 19(4)(b); and
- (b) which have not been produced as requested.

Application for warrant

7. An application for a warrant under paragraph 6 must be made in accordance with the rules of the court.

Powers conferred by search warrant

8.—(1) A warrant issued under paragraph 6 authorises a named officer and any other authorised officer to accompany the named officer to—

- (a) enter the premises specified in the warrant, using such force as is reasonably necessary for that purpose;

- (b) search the premises and take copies of any document appearing to be a relevant document;
- (c) seize any document appearing to be a relevant document if—
 - (i) such action appears to be necessary for preserving the document or preventing interference with it; or
 - (ii) it is not reasonably practicable to take copies of the document on the premises;
- (d) take any other steps which appear to be necessary for the purpose mentioned in subparagraph (c)(i);
- (e) require any person on the premises to provide an explanation of any document appearing to be a relevant document;
- (f) require any person on the premises to state, to the best of the person's knowledge and belief, where a document appearing to be a relevant document may be found; and
- (g) require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relevant to the purpose of deciding under regulation 19 whether there has been a misuse of aid by the beneficiary to be produced in a form—
 - (i) in which it can be taken away; and
 - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(2) A warrant issued under paragraph 6 may authorise persons specified in the warrant to accompany the named officer who is executing the warrant.

(3) Any person entering premises by virtue of a warrant issued under paragraph 6 may take with the person such equipment as appears to the person to be necessary.

Warrants: further provision

9. A warrant issued under paragraph 6 must specify—

- (a) the nature of the offences created by paragraph 15; and
- (b) the purpose of the intended entry.

Time period

10. A warrant issued under paragraph 6 continues in force until the end of the period of one month beginning with the day on which it is issued.

Execution of warrants: notice

11.—(1) This paragraph applies if the court has issued a warrant under paragraph 6 on the basis that the requirements in paragraph 6(3) are met.

(2) Unless giving notice would be likely to frustrate or seriously prejudice the purpose of entering the premises, a warrant does not authorise entry to any business premises unless the named officer gives at least two working days' notice of the intended entry to the occupier of the premises.

Execution of warrants: evidence of authority

12.—(1) If the occupier of the business premises is present at the time when a named officer seeks to execute the warrant, the named officer must—

- (a) identify themselves to the occupier; and
- (b) produce to the occupier the warrant and documentary evidence that they are a named officer.

(2) If there is no person at the business premises when the named officer seeks to execute the warrant, the named officer must, before executing it—

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(3) If the named officer is unable to inform the occupier of the intended entry, the named officer must, on executing the warrant, leave a copy of it in a prominent place on the premises.

Execution of warrants: securing premises after entry

13. On leaving any premises which a named officer has entered under a warrant issued under paragraph 6, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secure as the named officer found them.

Execution of warrants: seizure

14. Any document seized under a warrant issued under paragraph 6 may be retained for a period of no more than 3 months.

PART 4

Offences

Offences

15.—(1) A person commits an offence if, without reasonable excuse, the person—

- (a) intentionally obstructs an authorised officer acting in the exercise of the officer's powers under paragraph 3, 5, or 8; or
- (b) fails to comply with a requirement reasonably imposed on them by an authorised officer acting in the exercise of the officer's powers under paragraph 3, 5 or 8.

(2) A person who commits an offence under this paragraph is liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

PART 5

General

Self-incrimination

16. A statement made by a person in response to a requirement imposed under this Schedule may only be used in evidence against that person—

- (a) on a prosecution for an offence under paragraph 15; or
- (b) on a prosecution for any other offence where—
 - (i) in giving evidence that person makes a statement inconsistent with the statement made in response to a requirement under this Schedule; and
 - (ii) evidence relating to the statement made in response to a requirement under this Schedule is adduced, or a question relating to it is asked, by that person or on that person's behalf.

Privileged communication

17.—(1) A person is not required under this Schedule to produce or disclose a privileged communication.

(2) In this paragraph, “privileged communication” means a communication—

- (a) that is—
 - (i) between a professional legal adviser and the adviser’s client; or
 - (ii) made in connection with, or in contemplation of, legal proceedings and for the purposes of those legal proceedings; and
- (b) which in proceedings in the court would be protected from disclosure on grounds of legal professional privilege.

(3) In application of this paragraph to Scotland, references to legal professional privilege are to be read as references to confidentiality of communications.

SCHEDULE 5

Regulation 32

Administrative penalties

Penalties

1.—(1) A penalty imposed under regulation 32 must be of an amount that the CMA considers appropriate.

(2) The amount may—

- (a) in the case of a penalty imposed under regulation 32(1)(a), be a fixed amount.
- (b) in the case of a penalty imposed under regulation 32(1)(b) or (c), be a fixed amount, an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.

(3) A penalty must not—

- (a) in the case of a fixed amount, exceed £30,000;
- (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day; and
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed £30,000 for the fixed amount and £15,000 for the daily rate.

(4) If a penalty is imposed by reference to a daily rate—

- (a) the day on which the penalty first starts to accumulate must be no earlier than the day on which the notice under paragraph 3 is served on the person; and
- (b) the day on which the penalty ceases to accumulate must be no later than the beginning of—
 - (i) the day on which the person complies with the market information order; or
 - (ii) if earlier, the day that is 4 weeks after the day on which the CMA published the decision on the investigation concerned.

Secretary of State power to amend maximum amount of penalty

2.—(1) The Secretary of State may, by regulations, amend an amount specified in paragraph 1(3).

(2) Regulations made under sub-paragraph (1) must 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.

(3) Before making regulations under sub-paragraph (1), the Secretary of State must consult the CMA, the devolved authorities and such other persons as the Secretary of State considers appropriate.

(4) Regulations under sub-paragraph (1) are to be made by statutory instrument.

(5) A statutory instrument made under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

Main procedural requirements

3.—(1) The CMA must give notice to the person concerned as soon as practicable after imposing a penalty under regulation 32.

(2) The notice must specify—

- (a) that the CMA has imposed a penalty on the person;
- (b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;
- (c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
- (d) the failure or conduct which the CMA considers gave it the power to impose the penalty;
- (e) any other facts which the CMA considers justify the imposition of a penalty and the amount or amounts of the penalty;
- (f) the manner in which, and place at which, the penalty is required to be paid to the CMA;
- (g) the date or dates by which the penalty or (as the case may be) different portions of it are required to be paid;
- (h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and
- (i) that the person has the right to apply to the CMA under sub-paragraph (4) or to appeal under paragraph 5 and the main details of those rights.

(3) The date or dates specified in a notice under sub-paragraph (2)(g) must be no earlier than the end of the period of 28 days beginning with the date of service of the notice on the person concerned.

(4) The person concerned may, within 14 days of the date of service of the notice on the person under sub-paragraph (1), apply to the CMA for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.

(5) The CMA must notify the person concerned of the CMA's decision following an application under sub-paragraph (4).

(6) The CMA must give notice under sub-paragraph (1) by—

- (a) serving a copy of the notice on the person on whom the penalty was imposed; and
- (b) publishing the notice.

(7) However, before publishing the notice, the CMA must give the person an opportunity to indicate whether the person considers that the CMA should treat any information in the notice as confidential information.

Payments and interest by instalments

4.—(1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.

(2) If an application has been made under paragraph 3(4), the penalty is not required to be paid until the application has been determined, withdrawn or otherwise dealt with.

(3) If a portion of a penalty has not been paid by the date required for that portion, the CMA may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.

(4) Any sums received by the CMA in or towards the payment of a penalty, or interest on a penalty, must be paid into the Consolidated Fund.

Grounds for appeal

5.—(1) A person on whom a penalty is imposed may appeal to the court against—

- (a) the imposition or nature of the penalty;
- (b) the amount or amounts of the penalty; or
- (c) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.

(2) An appeal must be brought within the period of 28 days starting with the day on which the notice under paragraph 3 was served on the person concerned.

(3) However, if the appeal relates to a decision of the CMA following an application under paragraph 3(4), the appeal must be brought within the period of 28 days starting with the day on which the person concerned is notified of the CMA's decision under paragraph 3(5).

(4) If an appeal is brought under sub-paragraph (1)—

- (a) the penalty is not required to be paid until the appeal has been determined, withdrawn or otherwise dealt with; and
- (b) the CMA may agree to reduce the amount or amounts of the penalty in settlement of the appeal.

(5) In paragraph (4), a reference to an appeal brought under sub-paragraph (1) also includes any relevant subsequent appeal of a court decision in relation to the penalty.

Recovery of penalties

6.—(1) This paragraph applies if a penalty, or any portion of such a penalty, has not been paid by the date on which it is required to be paid.

(2) The CMA may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid.

(3) Amounts payable under sub-paragraph (2) are recoverable summarily (or, in Scotland, recoverable) as a civil debt by the CMA.

Statement of policy

7.—(1) The CMA must publish a statement of policy in relation to its use of penalties under this Schedule.

(2) The statement must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed.

(3) The CMA may revise its statement of policy and, if it does so, it must publish the revised statement.

(4) The CMA must consult such persons as it considers appropriate before publishing or revising its statement of policy.

(5) Any consultation carried out by the CMA before exit day may be treated by the CMA as consultation carried out under this paragraph for the purposes of sub-paragraph (4).

SCHEDULE 6

Regulation 50

Monitoring and reporting of aid that is exempt from notification

PART 1

Block exemption regulations

Summary reports

1.—(1) If an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of a block exemption regulation, the aid grantor must send the CMA—

- (a) the specified summary information about the aid; and
- (b) an internet link providing access to the full text of the aid.

(2) The aid grantor must send the information under sub-paragraph (1)—

- (a) in the specified form;
- (b) in relation to the GBER and the FBER, within a period of 20 working days starting with the first working day after the day on which the aid scheme enters into force or the ad hoc aid is granted (as appropriate); and
- (c) in relation to the ABER, at least 10 working days before the day the aid scheme enters into force or the ad hoc aid is granted (as appropriate).

(3) For summary information in relation to the ABER, the CMA must send the aid grantor a notice of receipt with an identification number of the aid within 10 working days starting with the first working day after receipt of the summary information under sub-paragraph (2)(c).

(4) In relation to the ABER and the FBER, the full text of the aid referred to in sub-paragraph (1) must include an explicit reference to the title and relevant provisions of the ABER or the FBER (as appropriate).

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

High value awards of individual aid

2.—(1) An aid grantor must send the information in sub-paragraph (2) to the CMA if the aid grantor grants—

- (a) individual aid under the GBER that exceeds 500,000 Euros;
- (b) individual aid under the FBER that exceeds 30,000 Euros; or
- (c) individual aid under the ABER that exceeds—
 - (i) 60,000 Euros, for beneficiaries active in the primary agricultural production; or
 - (ii) 500,000 Euros, for beneficiaries active in the sectors of the processing of agricultural products, the marketing of agricultural products, the forestry sector or activities falling outside the scope of Article 42 of the TFEU (as it had effect immediately before exit day).

(2) The information referred to in sub-paragraph (1) is—

- (a) name of the beneficiary;
- (b) beneficiary’s identifier;

- (c) type of enterprise (SME or large) at the date of granting;
- (d) region in which the beneficiary is located, at NUTS level II;
- (e) sector of activity at NACE group level;
- (f) aid element, expressed as full amount in sterling;
- (g) aid instrument (grant or interest rate subsidy, loan or repayable advances, reimbursable grant, guarantee, tax advantage, tax exemption or other aid instrument);
- (h) date of granting;
- (i) objective of the aid;
- (j) granting authority;
- (k) reference or identification number of the aid (if applicable); and
- (l) for aid schemes under Article 16 or 21 of the GBER, the name of the entrusted entity and the names of the selected financial intermediaries.

(3) In relation to the GBER and the ABER, for aid schemes in the form of tax advantages and aid schemes covered by Article 16 or 21 of the GBER, the condition in sub-paragraph (2)(f) is satisfied if the aid grantor sends the required information on individual aid amounts in the following ranges (in millions of Euros)—

- (a) 0.06-0.5 for primary agricultural production under ABER only;
- (b) 0.5-1;
- (c) 1-2;
- (d) 2-5;
- (e) 5-10;
- (f) 10-30; and
- (g) 30 and more.

(4) In relation to the FBER, for aid schemes in the form of tax advantages, the condition in sub-paragraph (2)(f) is satisfied if the aid grantor sends the required information on individual aid amounts in the following ranges (in millions of Euros)—

- (a) 0.03-0.2;
- (b) 0.2-0.4;
- (c) 0.4-0.6;
- (d) 0.6-0.8; and
- (e) 0.8-1.

(5) The aid grantor must send the information required by this paragraph—

- (a) in the specified form; and
- (b) within a period of—
 - (i) 6 months starting with the date the aid was granted; or
 - (ii) in the case of aid given in the form of a tax advantage, 1 year from the date the tax declaration is due.

(6) In this paragraph—

“NACE” has the meaning given in Article 2A of the GBER^(a);

“NUTS” has the meaning given in Article 2A of the GBER; and

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

(a) Article 2A of the GBER is inserted by paragraph 4 of Schedule 9 to these Regulations.

Annual reports

3.—(1) If an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of a block exemption regulation in a year, the aid grantor must, by the specified date, send the CMA an annual report for the year on the application of the block exemption regulation.

(2) The annual report must—

- (a) contain the specified information in respect of each whole year or each part year during which the block exemption regulation has been used by the aid grantor; and
- (b) be sent in the specified form.

(3) If the annual report relates to the ABER, the report must, if relevant, also contain information concerning the following—

- (a) animal diseases or plant pest as referred to in Article 26 of the ABER; and
- (b) meteorological information on the type, timing, relative magnitude and location of climatic events which can be assimilated to a natural disaster as referred to in Article 25 of the ABER or natural disasters in the agricultural sector as referred to in Article 30 of the ABER.

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

Monitoring

4.—(1) If an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of a block exemption regulation, the aid grantor must maintain detailed records with the information and supporting documentation necessary to establish that the conditions in the block exemption regulation are fulfilled.

(2) An aid grantor must keep the records for 10 years from the date on which ad hoc aid was granted or the last aid was granted under an aid scheme.

(3) If an aid scheme under the GBER grants aid automatically and there is no ex ante verification that all compatibility conditions are met for each beneficiary, such as a scheme based on tax declarations of the beneficiaries—

- (a) the aid grantor must regularly verify, at least ex post and on a sample basis, that all compatibility conditions of the scheme are met; and
- (b) the aid grantor must maintain detailed records of the verifications for a period of at least 10 years from the date on which the last aid was granted under the scheme.

(4) The CMA may request an aid grantor to send any information and supporting documentation that the CMA considers necessary to monitor compliance with the conditions of a block exemption regulation.

(5) If the CMA makes a request under sub-paragraph (4), the aid grantor must send the requested information to the CMA within a period of 20 working days from the date the request was received or such longer period as may be set in the request.

(6) 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 of these Regulations.

Publication of information

5.—(1) An aid grantor must publish on a website—

- (a) any summary information provided by the aid grantor to the CMA under paragraph 1, or an internet link to a website that contains the information; and
- (b) any internet links to the full text of aid provided by the aid grantor to the CMA under paragraph 1.

(2) The CMA must publish on a website—

- (a) any summary information received by the CMA under paragraph 1, or an internet link to a website that contains the information;
- (b) any internet links to the full text of aid received by the CMA under paragraph 1; and
- (c) any information on high value awards of aid received by the CMA under paragraph 2.

(3) The publication requirements in sub-paragraphs (1) and (2) do not apply in relation to final consumers for schemes under Article 51 of the GBER.

(4) The publication requirements in sub-paragraph (1) do not apply to individual aid under the ABER if—

- (a) the aid falls within scope of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005;
- (b) the aid is either—
 - (i) support for rural development; or
 - (ii) granted as additional national financing for rural development under Article 82 of Regulation (EU) No 1305/2013; and
- (c) the aid award has already been published in accordance with Articles 111, 112 and 113 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008.

(5) If sub-paragraph (4) applies, the aid grantor must include a reference to the website referred to in Article 111 of Regulation (EU) No 1306/2013 on the website referred to in sub-paragraph (1).

(6) In this paragraph, “support for rural development” means financial support granted under Title III of Regulation (EU) No 1305/2013 or Title III, Chapter 2 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

PART 2

De minimis regulations, SGEI decision and road and rail

Monitoring of de minimis aid

6.—(1) If an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of a de minimis regulation, the aid grantor must maintain detailed records with the information and supporting documentation necessary to establish that the conditions in the de minimis regulation are fulfilled.

(2) An aid grantor must keep the records for 10 years from the date on which the individual aid was granted or the last aid was granted under an aid scheme.

(3) The CMA may request an aid grantor to send any information and supporting documentation that the CMA considers necessary to monitor compliance with the conditions of a de minimis regulation.

(4) If the CMA makes a request under sub-paragraph (3), the aid grantor must send the requested information to the CMA within a period of 20 working days from the date the request was received or such longer period as may be set in the request.

(5) 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 of these Regulations.

Transparency of aid under the SGEI decision

7.—(1) This paragraph applies if—

- (a) an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of the SGEI decision;
- (b) the compensation is above 15 million Euros; and
- (c) the compensation is granted to an undertaking that also has activities outside the scope of the service of general economic interest.

(2) The aid grantor concerned must publish—

- (a) the entrustment act or a summary which includes the elements listed in Article 4 of the SGEI decision; and
- (b) the amounts of aid granted to the undertaking on a yearly basis.

Information under the SGEI decision

8.—(1) If an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of the SGEI decision, the aid grantor must keep available all the information necessary to determine whether the compensation granted is compatible with the SGEI decision.

(2) An aid grantor must keep the information during the period of entrustment and for at least 10 years from the end of the period of entrustment.

(3) The CMA may request an aid grantor to send, within a set period, any information that the CMA considers necessary to monitor compliance with the conditions of the SGEI decision.

(4) If the CMA makes a request under sub-paragraph (3), the aid grantor must send the requested information to the CMA within the set period.

(5) 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 of these Regulations.

Reports under the SGEI decision

9.—(1) If an aid grantor grants aid that is exempt from the notification requirement in Article 108(3) of the TFEU by virtue of the SGEI decision, the aid grantor must send a report to the CMA every 2 years on any aid granted under the SGEI decision.

(2) The report must provide a detailed overview of the application of the decision for the different categories of services referred to in Article 2(1) of the decision, including—

- (a) a description of the application of the decision to the services falling within its scope, including in-house activities;
- (b) the total amount of aid granted in accordance with the decision, with a breakdown by the economic sector of the beneficiaries;
- (c) an indication of whether, for a particular type of service, the application of the decision has given rise to difficulties or complaints by third parties; and
- (d) any other information concerning the application of the decision required by the CMA and that has been notified to the aid grantor in due time before the report is to be sent.

(3) The first report must be sent within 2 years of the aid grantor granting aid on or after exit day that is exempt from the notification requirement by virtue of the SGEI decision and further reports must be sent at intervals of no more than 2 years.

Road and rail regulation

10.—(1) The CMA may request an aid grantor to send any information that the CMA considers necessary to monitor whether aid has been granted in accordance with the road and rail regulation.

(2) If the CMA makes a request under sub-paragraph (1), the aid grantor must send the requested information to the CMA within a period of three months or any longer period as may be specified in the request.

(3) 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 of these Regulations.

SCHEDULE 7

Regulation 51

Guidelines, frameworks, notices and communications

<i>Item</i>	<i>Title of guidance</i>
<i>General</i>	
1	Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid(a)
2	Communication from the Commission on the revision of the method for setting the reference and discount rates(b)
3	Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees(c)
4	Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union(d)
<i>Banking and finance</i>	
5	Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition(e)
6	Communication from the Commission on the treatment of impaired assets in the Community banking sector(f)
7	Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules(g)
8	Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis(h)
9	Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis(i)
10	Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication')(j)
11	Communication from the Commission – Guidelines on State aid to promote risk finance investments(k)
<i>Environment and energy</i>	
12	Communication from the Commission – Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012(l)

(a) OJ No C 119, 22.5.02, p22.

(b) OJ No C 14, 19.1.08, p6.

(c) OJ No C 155, 20.6.08, p10, as amended by OJ No C 244, 25.9.08, p32.

(d) OJ No C 262, 19.7.16, p1.

(e) OJ No C 10, 15.1.09, p2.

(f) OJ No C 72, 26.3.09, p1.

(g) OJ No C 195, 19.8.09, p9.

(h) OJ No C 329, 7.12.10, p7.

(i) OJ No C 356, 6.12.11, p7.

(j) OJ No C 216, 30.7.13, p1.

(k) OJ No C 19, 22.1.14, p4.

(l) OJ No C 158 5.6.12, p4, as amended by OJ No C 387, 15.12.12, p5 and OJ No C 82, 21.3.13, p9.

- 13 Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020(a)
- Telecommunications*
- 14 Communication from the Commission on the application of State aid rules to public service broadcasting(b)
- 15 Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks(c)
- 16 Communication from the Commission on State aid for films and other audiovisual works(d)
- Transport*
- 17 Commission Communication – Community guidelines on State aid to maritime transport(e)
- 18 Communication from the Commission providing guidance on State aid to ship management companies(f)
- 19 Communication from the Commission – Community guidelines on State aid for railway undertakings(g)
- 20 Communication from the Commission – Guidelines on State aid to airports and airlines(h)
- 21 Interpretative guidelines concerning Regulation (EC) 1370/2007 on public passenger transport services by rail and by road (Regulation 1370/2007 Guidelines)(i)
- Agriculture*
- 22 European Union Guidelines for State aid in the agriculture and forestry sectors and in rural areas 2014 to 2020(j)
- 23 Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector(k)
- Services of general economic interest*
- 24 Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest(l)
- 25 Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011)(m)
- Other horizontal guidance*
- 26 Communication from the Commission – Criteria for the analysis of the compatibility of State aid for training subject to individual notification(n)
- 27 Communication from the Commission – Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification(o)
- 28 Guidelines on regional State aid for 2014-2020(p), except for section 5 (but not section 5.4) of those guidelines
- 29 Communication from the Commission – Framework for State aid for research and development and innovation(q)
- 30 Communication from the Commission – Guidelines on State aid for rescuing and

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- (a) OJ No C 200, 28.6.14, p1, as amended by OJ No C 290, 10.8.16, p11.
- (b) OJ No C 257, 27.10.09, p1.
- (c) OJ No C 25, 26.1.13, p1.
- (d) OJ No C 332, 15.11.13, p1.
- (e) OJ No C 13, 17.1.04, p3, as amended by OJ No C 120, 13.4.17, p10.
- (f) OJ No C 132, 11.6.09, p6.
- (g) OJ No C 184, 22.7.08, p13.
- (h) OJ No C 99, 4.4.14, p3, as amended by OJ No C 456, 18.12.18, p27.
- (i) OJ No C 92, 29.3.14, p1.
- (j) OJ No C 204, 1.7.14, p1, as amended by OJ No C 390, 24.11.15, p4 and OJ No C 139, 20.4.18, p3.
- (k) OJ No C 217, 2.7.15, p1, as amended by OJ No C 422, 22.11.18, p1.
- (l) OJ No C 8, 11.1.12, p4.
- (m) OJ No C 8, 11.1.12, p15.
- (n) OJ No C 188, 11.8.09, p1.
- (o) OJ No C 188, 11.8.09, p 6.
- (p) OJ No C 209, 23.7.13, p1, as amended by OJ No C 231, 25.6.16, p1.
- (q) OJ No C 198, 27.6.14, p1.

restructuring non-financial undertakings in difficulty(a)

Miscellaneous

- 31 Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance(b)
- 32 Communication from the Commission – Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest(c)
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SCHEDULE 8

Regulation 67

Transitional and savings provisions

Interpretation

1. In this Schedule—

“EU state aid decision” means a European Commission or Council decision that—

- (a) is to form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; and
- (b) approves state aid granted or proposed to be granted by the United Kingdom as being compatible with the internal market; and

“state aid rights” has the meaning given in regulation 3.

Application

2.—(1) The state aid rights apply in relation to—

- (a) aid granted on or after exit day (“post-exit aid”); and
- (b) aid granted before exit day if, immediately before exit day, the limitation period for the aid had not expired (“pre-exit aid”).

(2) This paragraph is subject to paragraphs 3 to 10.

EU state aid decisions

3.—(1) This paragraph applies in relation to pre-exit aid and post-exit aid that was—

- (a) approved by an EU state aid decision before exit day; and
- (b) granted at a time when the EU state aid decision had not expired.

(2) The aid is deemed—

- (a) to have been approved by the CMA in accordance with Article 108(3) of the TFEU; and
- (b) to be existing aid.

(3) The EU state aid decision is deemed to be a decision of the CMA that is addressed to the aid grantor and—

- (a) any conditions of the decision to which the approval was subject immediately before exit day continue to apply on and after exit day; and
- (b) any reporting obligations in the decision that applied immediately before exit day continue to apply on and after exit day, except that an obligation for the United Kingdom

(a) OJ No C 249, 31.7.14, p1.

(b) OJ No C 392, 19.12.12, p1, most recently amended by OJ No C 225, 28.6.18, p1.

(c) OJ No C 188, 20.6.14, p4.

to report to the Commission is to be read as an obligation for the aid grantor to report to the CMA.

Duration of EU state aid decisions

4.—(1) An EU state aid decision expires at the end of the period for which the aid is approved in accordance with the decision.

(2) However, sub-paragraph (3) applies to an EU state aid decision that was published in the Official Journal on or after 30 March 2017.

(3) For the purpose of establishing when the decision expires under sub-paragraph (1), any condition or observation in the decision that makes the approval of the aid subject to the United Kingdom being a Member State does not apply.

Categories of aid specified by the Council

5.—(1) This paragraph applies if—

- (a) a decision of the Council before exit day specifies a category of aid for the purposes of Article 107(3)(e) of the TFEU (as it had effect immediately before exit day);
- (b) the decision is to form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; and
- (c) the decision is not revoked by these Regulations.

(2) On and after exit day, the category of aid specified in the Council decision is deemed to be a category of aid that the CMA may approve under Article 107(3) of the TFEU.

Pre-exit aid that was exempt from notification requirement

6.—(1) This paragraph applies to pre-exit aid that was, immediately before exit day, exempt from the notification requirement in Article 108(3) of the TFEU (as it had effect immediately before exit day).

(2) The aid is deemed to be exempt from the notification requirement in Article 108(3) of the TFEU and—

- (a) if the aid was originally exempt by virtue of the road and rail regulation, an SGEI exemption or an EU block exemption, the aid is deemed to have been approved by the CMA under Article 93, 106(2) or 107(2) or (3) of the TFEU (as appropriate);
- (b) if the aid was originally exempt by virtue of an EU de minimis exemption, the aid is deemed to not meet the criteria in Article 107(1) of the TFEU; and
- (c) in any other case, the aid is deemed to not be prohibited by Article 107(1) of the TFEU.

(3) However—

- (a) any conditions to which the exemption was subject immediately before exit day continue to apply on and after exit day; and
- (b) any reporting obligations attached to the exemption that applied immediately before exit day continue to apply on and after exit day, except that an obligation for the United Kingdom to report to the Commission is to be read as an obligation for the aid grantor to report to the CMA.

(4) In this paragraph—

“enabling regulation” means 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 (as it had effect immediately before exit day);

“EU block exemption” means any block exemption made under the enabling regulation or the previous enabling regulation;

“EU de minimis exemption” means any de minimis exemption made under the enabling regulation or the previous enabling regulation;

“previous enabling regulation” means Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid;

“road and rail regulation” means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (as it had effect immediately before exit day); and

“SGEI exemption” 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 (as it had effect immediately before exit day) or Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest.

CMA approval of pre-exit aid

7.—(1) This paragraph applies if the CMA is deciding whether to approve pre-exit aid under Chapter 2 (unlawful aid) or Chapter 3 (misuse of aid) of Part 3.

(2) In deciding whether to approve the aid—

- (a) regulations 5(2) and 6 do not apply;
- (b) the CMA must have regard to the substantive criteria contained in any appropriate European Commission guidelines, frameworks, notices and communications that applied at the time the aid was granted; and
- (c) in the condition for Article 107(3) of the TFEU in the third column of the Table in regulation 3(4)—
 - (i) in paragraph (a), the reference to an area that was, immediately before exit day, specified in Schedule 1 to the Assisted Areas Order 2014 is to be read as a reference to an area that was, at the time the aid was granted, specified in Schedule 1 to the Assisted Areas Order 2007^(a) or Schedule 1 to the Assisted Areas Order 2014 (as appropriate);
 - (ii) in paragraph (c), the reference to an area that was, immediately before exit day, specified in Schedule 2 to the Assisted Areas Order 2014 is to be read as a reference to an area that was, at the time the aid was granted, specified in Schedule 2 to the Assisted Areas Order 2007 or Schedule 2 to the Assisted Areas Order 2014 (as appropriate); and
 - (iii) there is deemed to be a paragraph (e) which provides that the CMA may approve such other categories of aid that had, at the time the aid was granted, been specified by the Council on a proposal from the Commission in accordance with Article 107(3)(e) of the TFEU (as it had effect immediately before exit day).

Application to existing Acts of Parliament

8.—(1) The state aid rights do not apply in relation to aid granted by an existing Act of Parliament.

(2) For the purposes of this Schedule, aid is granted by an existing Act of Parliament if an Act passed before exit day makes provision that—

- (a) amounts to a grant of new aid; or
- (b) requires a grant of new aid by a Minister of the Crown or any other person.

(a) S.I. 2007/107.

(3) An Act does not require a grant of new aid if a power could be exercised, or a duty performed, in a way that would not amount to a grant of new aid.

Deemed authorisation before exit day

9.—(1) This paragraph applies to pre-exit aid that was existing aid in accordance with Article 1(b)(iii) of the procedural regulation (deemed authorisation by the Commission) before exit day.

(2) The aid is deemed—

- (a) to be approved by the CMA in accordance with Article 108(3) of the TFEU; and
- (b) to be existing aid under these Regulations.

(3) In this paragraph, “procedural regulation” means 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).

Savings

10.—(1) This paragraph applies to any EU decision or EU tertiary legislation that—

- (a) was made under the enabling regulation, the procedural regulation or the predecessor legislation;
- (b) was in force immediately before exit day; and
- (c) is to form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018.

(2) The EU decision or EU tertiary legislation forms part of domestic law in accordance with section 3 of the European Union (Withdrawal) Act 2018 and continues in force on and after exit day despite the revocations made by regulation 65(1)(d) and (e).

(3) In this paragraph—

“enabling regulation” means 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 (as it had effect immediately before exit day);

“EU decision” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018;

“EU tertiary legislation” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018;

“predecessor legislation” means—

- (a) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (as it had effect immediately before exit day); and
- (b) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (as it had effect immediately before exit day); and

“procedural regulation” means 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).

Amendments to retained EU law

PART 1

Amendments to the General Block Exemption Regulation

Amendments to the General Block Exemption Regulation

1. 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 is amended in accordance with this Part.

Article 1 (Scope)

2. In Article 1—

- (a) in paragraph 2(a)—
 - (i) for “The Commission may decide”, substitute “The CMA may decide”;
 - (ii) for “Member State to the Commission”, substitute “aid grantor to the CMA”;
- (b) in paragraph 2(c), omit “or Member States”;
- (c) in paragraph 3(b), omit “regional investment aid in outermost regions,”;
- (d) in paragraph 3(d), after “2010/787/EU”, insert “, as it had effect immediately before exit day”;
- (e) in paragraph 3, in the final subparagraph, for “Member States”, substitute “aid grantors”;
- (f) in paragraph 4(a), for “Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market”, substitute “CMA decision not to approve unlawful or misused aid”;
- (g) omit paragraph 5.

Article 2 (definitions)

3. In Article 2—

- (a) before paragraph 1, insert—
 - “(A1) ‘state aid regulations’ means the State Aid (EU Exit) Regulations 2019;
 - (A2) ‘approved regional aid map’ means the regional aid map for the United Kingdom that was approved by the Commission for the period 2014-2020 in decision SA.38113, as amended by decision SA.46361 (OJ No. C 233, 18.07.2014 p. 1 and OJ No. C 83, 17.03.2017 p. 1);
 - (A3) ‘CMA’ means the Competition and Markets Authority;”;
- (b) in paragraph 4—
 - (i) in point (f)—
 - (aa) for “a Member State”, substitute “the United Kingdom”;
 - (bb) for “that Member State”, substitute “the United Kingdom”;
 - (ii) in point (g), for “a Member State”, substitute “the United Kingdom”;
- (c) in paragraph 7—
 - (i) after “means”, insert “islands”;
 - (ii) omit “outermost regions, Malta, Cyprus, Ceuta and Melilla, islands”;
 - (iii) for “a Member State”, substitute “the United Kingdom”;

- (d) omit paragraph 12;
- (e) in paragraph 13, after “uncompetitive coal mines”, insert “(as it had effect immediately before exit day)”;
- (f) in paragraph 20, for “an approved regional map and which is in force on the date of granting the aid”, substitute “the approved regional aid map”;
- (g) in paragraph 27, for “an approved regional aid map for the period 1.7.2014 - 31.12.2020 in application of Articles 107(3)(a) and (c) of the Treaty”, substitute “the approved regional aid map”;
- (h) in paragraph 35, for “Member State concerned”, substitute “United Kingdom”;
- (i) in paragraph 48, for “by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted”, substitute “as such in the approved regional aid map”;
- (j) in paragraph 48a, for “by the Commission as such in an individual decision on a regional aid map in force at the time the aid is granted”, substitute “as such in the approved regional aid map”;
- (k) in paragraph 50, omit “as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains”;
- (l) in paragraph 55, omit “an outermost region referred to in Article 349 of the Treaty,”;
- (m) in paragraph 61a, for “another contracting party to the EEA Agreement”, substitute “the United Kingdom”;
- (n) in paragraph 79—
 - (i) for “a Member State”, in both places it occurs, substitute “the United Kingdom”;
 - (ii) for “the provisions of Directive 2004/18/EC on”, substitute “retained EU law relating to”;
 - (iii) for “and public service contracts”, substitute “, public service contracts and concession contracts”;
 - (iv) omit “, or any subsequent legislation replacing that Directive in full or in part”;
- (o) in paragraph 81, for “a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC”, substitute “a UK multilateral trading facility or an EU multilateral trading facility, as those terms are defined in Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012,”;
- (p) in paragraph 91, omit “in accordance with Article 2(a) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC)”;
- (q) in paragraph 102—
 - (i) for “‘Union standard’ means”, substitute “‘national standard’ means”;
 - (ii) in point (a), for “a mandatory Union standard”, substitute “an applicable mandatory requirement”;
 - (iii) omit point (b) and the “or” before it;
- (r) in paragraph 107, for “means cogeneration which satisfies the definition of high efficiency cogeneration as set out in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC”, substitute “has the meaning given in regulation 2 of the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007”;
- (s) omit paragraph 120;

- (t) in paragraph 129, for “from a Union technological and internal market perspective”, substitute “from a United Kingdom technological perspective”;
- (u) in paragraph 130—
 - (i) in the first subparagraph, for “Union”, in both places it occurs, substitute “United Kingdom”;
 - (ii) in point (a)(i), for “Article 2(3) by Directive 2009/72/EC of 13 July 2009 concerning common rules for internal market in electricity”, substitute “Article 2 of Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity”;
 - (iii) in point (a)(ii), for “Article 2(5) by Directive 2009/72/EC”, substitute “Article 2 of Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity”;
- (v) omit paragraph 131;
- (w) in paragraph 132—
 - (i) for “two or more Member States”, substitute “the United Kingdom and one or more Member States or EFTA States”;
 - (ii) for “living in a Member State”, substitute “living in the United Kingdom or a Member State or EFTA State”;
 - (iii) for “another Member State”, substitute “a Member State or an EFTA State”;
 - (iv) for “Member States’ national law”, substitute “national law”;
- (x) in paragraph 140—
 - (i) for “by Member States”, substitute “by aid grantors”;
 - (ii) for “a Member State”, substitute “the United Kingdom”;
- (y) in paragraph 145—
 - (i) for “Member State or”, substitute “Member State, an EFTA State,”;
 - (ii) after “a Member of the Common European Aviation Area”, insert “or the competent authority of the United Kingdom”;
- (z) in paragraph 161, for “such as electricity, hydrogen, biofuels as defined in point (i) of Article 2 of Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG) which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector”, substitute “meeting the definition of alternative fuels as set out in regulation 2(1) of the Alternative Fuels Infrastructure Regulations 2017”;
- (aa) in paragraph 165, for “Directive 2000/59/EC of the European Parliament and of the Council”, substitute “regulation 2 of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003”.

New Article 2A

4. After Article 2, insert—

“Article 2A

References to TFEU Articles and certain other EU instruments

1. In this Regulation, a reference to Article 107(1) or 108(3) of the Treaty 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 regulation 3(1) and (2) of the state aid regulations.

2. In this Regulation, a reference to Article 107(2) or (3) of the Treaty is to be read in accordance with regulation 3(3)(b) of the state aid regulations.

3. In this Regulation, a reference to NUTS is a reference to the Nomenclature of Territorial Units for Statistics, as laid down in Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (as it had effect immediately before exit day).

4. In this Regulation, a reference to NACE is a reference to the NACE Rev. 2 statistical classification of economic activities, as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (as it had effect immediately before exit day).”.

Article 3 (Conditions for exemption)

5. In Article 3, for “be compatible with the internal market within the meaning of”, substitute “be deemed to be approved under”.

Article 4 (Notification thresholds)

6. In Article 4—

- (a) in paragraph 1(ee), omit “(or EUR 150 million per project in a maritime port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council”;
- (b) in paragraph 1(ff), omit “(or EUR 50 million per project in an inland port included in the work plan of a Core Network Corridor as referred to in Article 47 of Regulation (EU) No 1315/2013)”.

Article 5 (Transparency of aid)

7. In Article 5—

- (a) in paragraph 2(c)(i), for “Commission notice”, substitute “CMA statement of policy”;
- (b) in paragraph 2(c)(ii)—
 - (i) for “Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, or any successor notice”, substitute “CMA statement of policy on State aid in the form of guarantees, or any successor statement of policy”;
 - (ii) for “the Commission under any regulation adopted by the Commission in the State aid area applicable at the time”, substitute “the CMA under the state aid regulations”;
- (c) in paragraph 2(j), for “Commission”, substitute “CMA”.

Article 6 (Incentive effect)

8. In Article 6—

- (a) in paragraph 2, for “Member State”, substitute “aid grantor”;
- (b) in paragraph 3, for “Member State”, substitute “aid grantor”;
- (c) in paragraph 4(a), for “Member State”, substitute “aid grantor”.

Article 7 (Aid intensity and eligible costs)

9. In Article 7(1), omit the second subparagraph.

Article 8 (Cumulation)

10. In Article 8—

- (a) omit paragraph 2;
- (b) in paragraph 4, for “Commission”, substitute “CMA”;
- (c) omit paragraph 7.

Article 9 (Publication and information)

11. Omit Article 9.

Article 10 (Withdrawal of benefit of the block exemption)

12. Omit Article 10.

Article 11 (Reporting)

13. Omit Article 11.

Article 12 (Monitoring)

14. Omit Article 12.

Article 13 (Scope of regional aid)

15. In Article 13, in point (b), omit “regional investment aid in outermost regions and”.

Article 14 (Regional investment aid)

16. In Article 14—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 12, for “regional aid map which is in force at the time the aid is granted”, substitute “approved regional aid map”;
- (c) in paragraph 14, omit from “In the outermost regions” to the end.

Article 15 (Regional operating aid)

17. In Article 15—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 2(b), for “Member State concerned”, substitute “United Kingdom”;
- (c) omit paragraph 4.

Article 16 (Regional urban development aid)

18. In Article 16—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 2(b), after “Investment Funds”, insert “or an equivalent fund set up on or after exit day that is accepted by the CMA as eligible to co-finance urban development projects for the purposes of this Article”;
- (c) in paragraph 4, after “of the Council”, insert “or any eligible costs requirements included in the equivalent fund referred to in paragraph 2(b)”;

- (d) in paragraph 8—
 - (i) in point (a)—
 - (aa) omit “Union and”;
 - (bb) after “incorporation in”, insert “the United Kingdom, any EFTA State or”;
 - (ii) in point (b), omit “Union and”;
 - (iii) in point (d), for “a Member State”, substitute “an aid grantor”;
 - (iv) in point (f), for “Member State”, substitute “aid grantor”;
- (e) in paragraph 11, for “Member State”, substitute “aid grantor”.

Article 17 (Investment aid to SMEs)

19. In Article 17(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 18 (Aid for consultancy in favour of SMEs)

20. In Article 18(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 19 (Aid to SMEs for participation in fairs)

21. In Article 19(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 20 (Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation projects)

22. In Article 20(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 21 (Risk finance aid)

- 23.** In Article 21—
- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
 - (b) in paragraph 12, after “incorporation in”, insert “the United Kingdom, any EFTA State or”;
 - (c) in paragraph 13(b), omit “Union and”;
 - (d) in paragraph 13(d), for “a Member State”, substitute “an aid grantor”;
 - (e) in paragraph 14(b), for “Member State”, substitute “aid grantor”;
 - (f) in paragraph 17, for “A Member State”, substitute “An aid grantor”.

Article 22 (Aid for start-ups)

24. In Article 22(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 23 (Aid to alternative trading platforms specialised in SMEs)

25. In Article 23(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 24 (Aid for scouting costs)

26. In Article 24(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 25 (Aid for research and development projects)

27. In Article 25—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 6(b)(i)—
 - (i) for “at least two Member States”, substitute “the United Kingdom and at least one Member State”;
 - (ii) for “or in a Member State and in a”, substitute “or in the United Kingdom and either a Member State or a”.

Article 26 (Investment aid for research infrastructures)

28. In Article 26—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 7, for “Member States”, substitute “aid grantors”.

Article 27 (Aid for innovation clusters)

29. In Article 27(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 28 (Innovation aid for SMEs)

30. In Article 28(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 29 (Aid for process and organisational innovation)

31. In Article 29(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 30 (Aid for research and development in the fishery and aquaculture sector)

32. In Article 30(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 31 (Training aid)

33. In Article 31—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 5(b), after “Union registers”, insert “, registers in the territories covered by the EEA Agreement or United Kingdom registers”.

Article 32 (Aid for the recruitment of disadvantaged workers in the form of wage subsidies)

34. In Article 32(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 33 (Aid for the employment of workers with disabilities in the form of wage subsidies)

35. In Article 33(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 34 (Aid for compensating the additional costs of employing workers with disabilities)

36. In Article 34(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 35 (Aid for compensating the costs of assistance provided to disadvantaged workers)

37. In Article 35(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 36 (Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards)

38. In Article 36—

- (a) in the heading, for “Union standards”, in both places it occurs, substitute “national standards”;
- (b) in paragraph 1—
 - (i) for “Union standards”, in both places it occurs, substitute “national standards”;
 - (ii) for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (c) in paragraph 2—
 - (i) in point (a), for “Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standards”, substitute “national standards”;
 - (ii) in point (b), for “Union standards”, substitute “national standards”;
- (d) omit paragraphs 3 and 4;
- (e) in paragraph 5, for “Union standards” in both places it occurs, substitute “national standards”.

Article 37 (Investment aid for early adaptation to future Union standards)

39. Omit Article 37.

Article 38 (Investment aid for energy efficiency measures)

40. In Article 38—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 2, for “Union standards already adopted, even if they are not yet in force”, substitute “national standards”.

Article 39 (Investment aid for energy efficiency projects in buildings)

41. In Article 39—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;

- (b) in paragraph 8—
 - (i) for “Member States can set up”, substitute “Aid grantors can set up”;
 - (ii) in point (a)—
 - (aa) omit “Union and”;
 - (bb) after “incorporation in”, insert “the United Kingdom, any EFTA State or”;
 - (iii) in point (b), omit “Union and”;
 - (iv) in point (d), for “a Member State”, substitute “an aid grantor”;
 - (v) in point (f), for “Member State”, substitute “aid grantor”;
- (c) omit paragraph 10.

Article 40 (Investment aid for high-efficiency cogeneration)

42. In Article 40(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 41 (Investment aid for the promotion of energy from renewable sources)

43. In Article 41—
- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
 - (b) in paragraph 4, for “that do not comply with”, substitute “if the aid would prevent the achievement of an environmental objective in accordance with retained EU law which implemented Article 4 of”.

Article 42 (Operating aid for the promotion of electricity from renewable sources)

44. In Article 42—
- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
 - (b) in paragraph 3—
 - (i) for “Member States”, substitute “Aid grantors”;
 - (ii) for “the Commission according to the modalities in described in Article 11(a)”, substitute “the CMA”.

Article 43 (Operating aid for the promotion of energy from renewable sources in small scale installations)

45. In Article 43(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 44 (Aid in the form of reductions in environmental taxes under Directive 2003/96/EC)

46. In Article 44—
- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
 - (b) after paragraph 4, insert—

“5. For the purposes of this Article and Article 6(5)(e), references to Directive 2003/96/EC are to be read:

 - (a) as references to that Directive as it had effect immediately before exit day; and

- (b) as if the conditions in, and the minimum levels of taxation set by, that Directive (read in accordance with point (a)) were binding on the United Kingdom on and after exit day.”.

Article 45 (Investment aid for remediation of contaminated sites)

47. In Article 45—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 3, omit from “applicable in each Member State” to “amending Directive 2004/35/EC —”.

Article 46 (Investment aid for energy efficient district heating and cooling)

48. In Article 46(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 47 (Investment aid for waste recycling and re-utilisation)

49. In Article 47—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 4, for “Union law”, substitute “national law”.

Article 48 (Investment aid for energy infrastructure)

50. In Article 48—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 3, for “internal energy market legislation”, substitute “Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, and network codes and guidelines adopted, or regulations made, under either of those Regulations”.

Article 49 (Aid for environmental studies)

51. In Article 49—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 5, for “carried out under Article 8(4) of the Directive 2012/27/EU, unless the energy audit is carried out in addition to the mandatory energy audit under that Directive”, substitute “which are mandatory under regulation 26 of the Energy Savings Opportunity Scheme Regulations 2014”.

Article 50 (Aid schemes to make good the damage caused by certain natural disasters)

52. In Article 50—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 2(a), omit “of a Member State”.

Article 51 (Social aid for transport for residents of remote regions)

53. In Article 51—

- (a) in paragraph 1, for “compatible with the internal market pursuant to”, substitute “deemed to be approved under”;
- (b) in paragraph 3, after “port within”, insert “the United Kingdom or”.

Article 52 (Aid for broadband infrastructures)

54. In Article 52—

- (a) in paragraph 1, for “compatible with the internal market pursuant to”, substitute “deemed to be approved under”;
- (b) in paragraph 6, for “the Member State or the Union”, substitute “the United Kingdom”;
- (c) in paragraph 7, for “Member States”, substitute “Aid grantors”.

Article 53 (Aid for culture and heritage conservation)

55. In Article 53—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 2(b), omit “of a Member State”.

Article 54 (Aid schemes for audiovisual works)

56. In Article 54—

- (a) in paragraph 1, for “compatible with the internal market pursuant to”, substitute “deemed to be approved under”;
- (b) in paragraph 2—
 - (i) for “Member State”, substitute “aid grantor”;
 - (ii) for “establish effective processes”, substitute “follow any applicable established national processes”;
- (c) in paragraph 4—
 - (i) in the first subparagraph, for “Where a Member States”, substitute “Where an aid grantor”;
 - (ii) in point (a), for “Member State granting the aid”, substitute “United Kingdom”;
 - (iii) in point (b), for “granting Member State”, substitute “United Kingdom”;
 - (iv) in the final subparagraph, for “a Member State”, substitute “an aid grantor”;
- (d) in paragraph 7(a)—
 - (i) for “funded by more than one Member State”, substitute “funded by the United Kingdom and at least one Member State or EFTA State”;
 - (ii) for “from more than one Member State”, substitute “from the United Kingdom and at least one Member State or EFTA State”.

Article 55 (Aid for sport and multifunctional recreational infrastructures)

57. In Article 55—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 5, for “Member States”, substitute “aid grantors”.

Article 56 (Investment aid for local infrastructures)

58. In Article 56(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 56a (Aid for regional airports)

59. In Article 56a—

- (a) in paragraph 1, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”;
- (b) in paragraph 2, for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 56b (Aid for maritime ports)

60. In Article 56b(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 56c (Aid for inland ports)

61. In Article 56c(1), for “compatible with the internal market within the meaning of”, substitute “deemed to be approved under”.

Article 58 (Transitional provisions)

62. In Article 58, omit paragraphs 2 and 4.

Article 59

63. In Article 59—

- (a) omit “It shall apply until 31 December 2020.”;
- (b) omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Annex I

64. In Annex I, in Article 3(5), omit “or Union”.

Annex II

65. Omit Annex II.

Annex III

66. Omit Annex III.

PART 2

Amendments to the general de minimis regulation

Amendments to the general de minimis regulation

67. 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 is amended in accordance with this Part.

Article 1 (Scope)

68. In Article 1—

- (a) in paragraph 1(a), for “Council Regulation (EC) No 104/2000”, substitute “Regulation (EU) No 1379/2013 of the European Parliament and of the Council”;
- (b) in paragraph 1(d), omit “or Member States”;
- (c) in paragraph 2, for “Member State”, substitute “aid grantor”.

Article 2 (Definitions)

69. In Article 2—

- (a) in paragraph 1(a), for “Regulation (EC) No 104/2000”, substitute “Regulation (EU) No 1379/2013 of the European Parliament and of the Council”;
- (b) after paragraph 1(c), insert—
 - “(d) ‘state aid regulations’ means the State Aid (EU Exit) Regulations 2019;
 - (e) ‘CMA’ means the Competition and Markets Authority.”;
- (c) after paragraph 2, insert—

“3. In this Regulation, a reference to Article 107(1) or 108(3) of the Treaty 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 regulation 3(1) and (2) of the state aid regulations.”.

Article 3 (De minimis aid)

70. In Article 3—

- (a) in paragraph 2, omit “per Member State” in both places it occurs;
- (b) in paragraph 3, for “Member State”, substitute “aid grantor”;
- (c) in paragraph 5—
 - (i) omit “and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin”;
 - (ii) for “Member State concerned”, substitute “United Kingdom”.

Article 4 (Calculation of gross grant equivalent)

71. In Article 4—

- (a) in paragraph 6(c), for “Commission notice”, substitute “CMA statement of policy”;
- (b) in paragraph 6(d)(i)—
 - (i) for “Commission under another Commission Regulation in the State aid area applicable at that time”, substitute “CMA under the state aid regulations”;
 - (ii) for “Commission as being in line with the Guarantee Notice, or any successor Notice”, substitute “CMA as being in line with the CMA statement of policy on State aid in the form of guarantees, or any successor statement of policy”.

Article 5 (Cumulation)

72. In Article 5(2), for “Commission”, in both places it occurs, substitute “CMA”.

Article 6 (Monitoring)

73. In Article 6—

- (a) in paragraph 1—
 - (i) for “a Member State”, substitute “an aid grantor”;

- (ii) omit “and publication reference in the *Official Journal of the European Union*”;
- (iii) for “the Member State”, in both places it occurs, substitute “the aid grantor”;
- (b) in paragraph 2—
 - (i) for “a Member State”, substitute “the United Kingdom”;
 - (ii) for “that Member State”, substitute “the United Kingdom”;
- (c) in paragraph 3, for “A Member State”, substitute “An aid grantor”;
- (d) omit paragraph 4;
- (e) omit paragraph 5.

Article 7 (Transitional provisions)

74. In Article 7—

- (a) in paragraph 1, omit “Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.”;
- (b) omit paragraph 4.

Article 8 (Entry into force and period of application)

75.—(1) In Article 8, omit “It shall apply until 31 December 2020.”.

(2) In the words after Article 8, omit “This Regulation shall be Binding in its entirety and directly applicable in all Member States.”.

PART 3

Amendments to the SGEI de minimis regulation

Amendments to the SGEI de minimis regulation

76. 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 is amended in accordance with this Part.

Article 1 (Scope and definitions)

77. In Article 1—

- (a) after paragraph 1, insert—

“1A. In this Regulation, a reference to Article 106(2) of the Treaty is to be read in accordance with regulation 3(3)(b) of the state aid regulations.

1B. In this Regulation, a reference to Article 107(1) or 108(3) of the Treaty 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 regulation 3(1) and (2) of the state aid regulations.”;

- (b) in paragraph 2—

- (i) in point (a), for “Council Regulation (EC) No 104/2000”, substitute “Regulation (EU) No 1379/2013 of the European Parliament and of the Council”;
- (ii) in point (d), omit “or Member States”;
- (iii) in point (f), after “2010/787/EU”, insert “, as it had effect immediately before exit day”;
- (iv) in the final subparagraph, for “Member States”, substitute “aid grantors”;

- (c) after paragraph 3(c), insert—
 - “(d) ‘state aid regulations’ means the State Aid (EU Exit) Regulations 2019;
 - (e) ‘CMA’ means the Competition and Markets Authority.”.

Article 2 (De minimis aid)

78. In Article 2—

- (a) in paragraph 2—
 - (i) omit “and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin”;
 - (ii) for “Member State concerned”, substitute “United Kingdom”;
- (b) in paragraph 4(d)(i), for “Commission under a regulation adopted by the Commission in the State aid area”, substitute “CMA under the state aid regulations”;
- (c) in paragraph 6, for “Commission”, substitute “CMA”.

Article 3 (Monitoring)

79. In Article 3—

- (a) in paragraph 1—
 - (i) for “a Member State”, substitute “an aid grantor”;
 - (ii) omit “and publication reference in the *Official Journal of the European Union*”;
 - (iii) for “the Member State”, in each place it occurs, substitute “the aid grantor”;
- (b) in paragraph 2—
 - (i) for “a Member State”, substitute “the United Kingdom”;
 - (ii) for “that Member State”, substitute “the United Kingdom”;
- (c) omit paragraph 3.

Article 4 (Transitional provisions)

80. In Article 4, omit from “Any aid for the provision” to the end.

Article 5 (Entry into force and period of validity)

81.—(1) In Article 5, omit from “It shall” to the end.

(2) In the words after Article 5, omit “This Regulation shall be Binding in its entirety and directly applicable in all Member States.”.

PART 4

Amendments to the SGEI decision

Amendments to the SGEI decision

82. 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 is amended in accordance with this Part.

Article 1 (Subject matter)

83. In Article 1—

- (a) for “compatible with the internal market”, substitute “not prohibited by Article 107(1) of the Treaty”;
- (b) after “Treaty.”, insert “In this Decision, a reference to Article 107(1) or 108(3) of the Treaty 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 regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019. In this Decision, a reference to Article 106(2) of the Treaty is to be read in accordance with regulation 3(3)(b) of the State Aid (EU Exit) Regulations 2019.”.

Article 2 (Scope)

84. In Article 2(4), omit “and, respectively, Regulation (EEC) No 3577/92 where applicable”.

Article 3 (Compatibility and exemption from notification)

85. In Article 3—

- (a) for “be compatible with the internal market”, substitute “not be prohibited by Article 107(1) of the Treaty”;
- (b) for “the requirements flowing from the Treaty or from sectoral Union legislation”, substitute “any requirements in national law”.

Article 4 (Entrustment)

86. In Article 4, for “Member State”, substitute “aid grantor”.

Article 5 (Compensation)

87. In Article 5—

- (a) in paragraph 4—
 - (i) for “Article 107”, in each place it occurs, substitute “Article 107(1)”;
 - (ii) for “Member State”, substitute “aid grantor”;
- (b) in paragraph 6—
 - (i) for “Member States”, substitute “aid grantors”;
 - (ii) for “the Member State”, substitute “the aid grantor”;
- (c) in paragraph 8—
 - (i) for “Member States”, substitute “aid grantors”;
 - (ii) after “discount rates”, insert “(as published by the Competition and Markets Authority as a statement of policy under Part 6 of the State Aid (EU Exit) Regulations 2019)”;
 - (iii) for “the Member State”, substitute “the aid grantor”;
 - (iv) for “the Commission upon”, substitute “the Competition and Markets Authority upon”;
- (d) in paragraph 10, for “Member States”, substitute “Aid grantors”.

Article 6 (Control of overcompensation)

88. In Article 6—

- (a) in paragraph 1—
 - (i) for “Member States”, substitute “Aid grantors”;
 - (ii) for “Commission”, substitute “Competition and Markets Authority”;
- (b) in paragraph 2, for “Member State”, substitute “aid grantor”.

Article 7 (Transparency)

89. Omit Article 7.

Article 8 (Availability of information)

90. Omit Article 8.

Article 9 (Reports)

91. Omit Article 9.

Article 13 (Addressees)

92. Omit Article 13.

PART 5

Amendments to the financial transparency regulations

Amendments to the financial transparency regulations

93.—(1) The Financial Transparency (EC Directive) Regulations 2009^(a) are amended as follows.

(2) In regulation 2(1)—

- (a) in the definition of “compensation”, for “Article 87”, substitute “Article 107(1)”;
- (b) in the definition of “entrusted”, for “Article 86(2)”, substitute “Article 106(2)”;
- (c) omit the definition of “Financial Transparency Directive”;
- (d) in the definition of “public undertaking operating in the manufacturing sector”, after “Community”, insert “(as it had effect immediately before exit day)”;
- (e) in the definition of “services of general economic interest”, for “Article 86(2)”, substitute “Article 106(2)”;
- (f) in the definition of “Treaty”, for “establishing the European Community”, substitute “on the Functioning of the European Union”.

(3) In regulation 2(2), for “Article 296”, substitute “Article 346(1)”.

(4) After regulation 2(2), insert—

“(3) In these Regulations—

- (a) a reference to Article 107(1) of the Treaty 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 regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019; and
- (b) a reference to Article 106(2) or 346(1) of the Treaty is to be read in accordance with regulation 3(3)(b) of the State Aid (EU Exit) Regulations 2019.”.

(5) In regulation 3(5)(b)—

- (a) for “Member States”, substitute “the United Kingdom and the European Union”;
- (b) after “meaning of”, insert “Article 107(1) of”.

(6) In regulation 5—

^(a) S.I. 2009/2331; amended by S.I. 2011/1043 and S.I. 2011/1275.

- (a) for “Secretary of State”, in each place it occurs, substitute “Competition and Markets Authority”;
 - (b) omit paragraph (b) and the “and” before it.
- (7) In regulation 6(3)—
- (a) in sub-paragraph (a), for “the European Union”, substitute “retained EU law”;
 - (b) in sub-paragraph (b)—
 - (i) for “Member States”, substitute “the United Kingdom and the European Union”;
 - (ii) after “meaning of”, insert “Article 107(1) of”;
 - (c) in sub-paragraph (e), for “Article 86(2)”, substitute “Article 106(2)”.
- (8) In regulation 8—
- (a) for “Secretary of State”, in each place it occurs, substitute “Competition and Markets Authority”;
 - (b) omit paragraph (b) and the “and” before it.
- (9) In regulation 9—
- (a) for “Secretary of State”, in each place it occurs, substitute “Competition and Markets Authority”;
 - (b) omit paragraph (5).

PART 6

Amendments to other retained EU law

Amendments to the Agricultural Block Exemption Regulation

94.—(1) 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 is amended as follows.

- (2) Omit the following—
- (a) Articles 9 to 13;
 - (b) Annex II;
 - (c) Annex III.

Amendments to the Fisheries Block Exemption Regulation

95.—(1) 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 is amended as follows.

- (2) Omit the following—
- (a) Articles 9 to 12;
 - (b) Annex II;
 - (c) Annex III.

Amendments to the agricultural de minimis regulation

96.—(1) 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 is amended as follows.

(2) Omit Article 6(4) and (5).

Amendments to the fisheries de minimis regulation

97.—(1) 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 is amended as follows.

(2) Omit Article 6(4) and (5).

Amendments to the maritime and fisheries fund regulation

98.—(1) Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council is amended as follows.

(2) In Article 8—

(a) in paragraph 1—

(i) for “Articles 107, 108 and 109”, substitute “in accordance with the State Aid (EU Exit) Regulations 2019, Articles 107(1) and 108(3)”;

(ii) omit “by Member States”;

(b) in paragraph 2—

(i) for “Articles 107, 108 and 109”, substitute “Article 107(1) and 108(3)”;

(ii) omit “by Member States”;

(iii) after “Article 42 TFEU”, insert “(as it had effect immediately before exit day)”;

(c) after paragraph 4, insert—

“5. In this Article, a reference to Article 107(1) or 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 regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019.”;

(d) omit paragraph 4.

SCHEDULE 10

Regulation 68(2)

Amendments to legislation

PART 1

Amendments to UK primary legislation

Criminal Justice and Police Act 2001

1.—(1) The Criminal Justice and Police Act 2001(a) is amended as follows.

(2) In section 50(6), after “section 28(2)(b) of the Competition Act 1998 (c. 41)”, insert “or paragraph 8(1)(b) of Schedule 4 to the State Aid (EU Exit) Regulations 2019”.

(3) After section 57(1)(t)(b), insert—

(a) 2001 c.16.

(b) Section 57(1) was amended by regulation 13 of S.I. 2016/680, article 364 of S.I. 2001/3649, Schedule 6 to the Human Tissue Act 2004 (c. 30), Schedule 3 to the Animal Welfare Act 2006 (c. 45), Schedule 1 to S.I. 2009/1951, Schedule 27 to

- “(u) paragraph 14 of Schedule 4 to the State Aid (EU Exit) Regulations 2019.”.
- (4) After section 63(2)(i)(a), insert—
- “(j) paragraph 8(1)(g) of Schedule 4 to the State Aid (EU Exit) Regulations 2019.”.
- (5) After section 64(3)(a)(iii)(b), insert—
- “(iv) paragraph 8 of Schedule 4 to the State Aid (EU Exit) Regulations 2019.”.
- (6) After section 65(3A)(c), insert—
- “(3B) In relation to property which has been seized in exercise, or purported exercise, of—
- (a) the power of seizure conferred by paragraph 8 of Schedule 4 to the State Aid (EU Exit) Regulations 2019, or
- (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,
- references in this Part to an item subject to legal privilege shall be read as references to a privileged communication within the meaning of paragraph 17 of Schedule 4 to those Regulations.”.
- (7) In Schedule 1, after paragraph 67(d), insert—
- “*State Aid (EU Exit) Regulations 2019*
- 67A.** Each of the powers of seizure conferred by paragraph 8 of Schedule 4 to the State Aid (EU Exit) Regulations 2019 (seizure of documents or information).”.

Enterprise Act 2002

- 2.**—(1) The Enterprise Act 2002(e) is amended as follows.
- (2) After section 241A(2)(d)(f), insert—
- “(e) state aid information.”.
- (3) After section 243(3)(d)(g), insert—
- “(e) state aid information.”.
- (4) For section 245(4)(h), substitute—
- “(3A) A person who commits an offence under this section in England and Wales is liable—
- (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

the Finance Act 2007 (c. 11), Schedule 7 to the Human Fertilisation and Embryology Act 2008 (c. 22), Schedule 6 to the Consumer Rights Act 2015 (c. 15) and Schedule 19 to the Data Protection Act 2018 (c. 12).

(a) Section 63(2) was amended by Schedule 17 to the Gambling Act 2005 (c. 19) and Schedules 23 and 27 to the Finance Act 2007.

(b) Section 64(3) was amended by Schedules 11 and 12 to the Proceeds of Crime Act 2002 (c. 29), Schedule 10 to the Serious Crime Act 2007 (c. 27), Schedule 1 to S.I. 2009/1941 and Schedule 8 to the Policing and Crime Act 2009 (c. 26).

(c) Section 65 was amended by Schedule 11 to the Proceeds of Crime Act 2002 (c. 29), regulation 26 of S.I. 2006/3363, Schedule 1 to S.I. 2009/1941, Schedule 27 to the Finance Act 2007, Schedule 6 to the Consumer Rights Act 2015 and Schedule 19 to the Data Protection Act 2018.

(d) There are amendments to Schedule 1 but none are relevant to these Regulations.

(e) 2002 c. 40.

(f) Section 241A was inserted by section 1281 of the Companies Act 2006 (c. 46) and amended by section 114(2) of, and Schedule 19 to, the Financial Services Act 2012 (c. 21).

(g) Section 243 was amended by section 114(2) of, and Schedule 19 to, the Financial Services Act 2012.

(h) The effect of section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) was to remove the upper limit for fines that a magistrates’ court can impose on summary conviction in England and Wales.

(4) A person who commits an offence under this section in Scotland or Northern Ireland is liable—

- (a) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.”.

(5) In section 273(a), at the appropriate place insert—

““state aid information” means information that comes to a public authority in connection with the exercise of any function it has under or by virtue of—

- (a) the Financial Transparency (EC Directive) Regulations 2009;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) the State Aid (EU Exit) Regulations 2019.”.

(6) In each of Schedules 14 and 15(b), at the appropriate places insert—

“Financial Transparency (EC Directive) Regulations 2009.”;

“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.”;

“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.”;

“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.”; and

“State Aid (EU Exit) Regulations 2019.”.

Banking Act 2009

3.—(1) The Banking Act 2009(c) is amended as follows.

(2) In section 3(d)—

- (a) in subsection (1), in the definition of “extraordinary public financial support”, for the words from “has” to the end, substitute—

(a) Section 273 was amended by section 26(3) of, and Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 (c. 24).

(b) There are amendments to Schedules 14 and 15 but none are relevant.

(c) 2009 c. 1.

(d) Section 3 was amended by S.I. 2014/3329 and S.I. 2016/1239.

“means—

- (a) public financial support that constitutes state aid, or
- (b) public financial support at supra-national level which, if provided at national level, would constitute state aid,

that is provided in order to preserve or restore the viability, liquidity or solvency of a bank, a banking group company or a group of which a bank forms part;”;

- (b) before subsection (3), insert—

“(2D) In the definition of “extraordinary public financial support” the term “state aid” refers to aid which would (but for any relevant approval or exemption) be prohibited under Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019.”.

- (3) In section 145A(a)—

- (a) in subsection (1)(b), for the words from “aid to which” to the end, substitute “State aid”;
- (b) after subsection (1), insert—

“(1A) In this section, “State aid” means aid to which Article 107(1) or Article 108(3) of TFEU applies.”;

- (c) in subsection (2)—

- (i) omit “the United Kingdom to fulfil”;
- (ii) after “subsection (3)”, insert “to be fulfilled”.

- (d) in subsection (3)—

- (i) in paragraph (a), for “European Commission”, substitute “CMA”;
- (ii) in paragraph (b), for “Commission”, substitute “CMA”;
- (iii) in paragraph (c), for the words from “is, or would” to the end, substitute “is not, or would not be, prohibited by Article 107(1) of TFEU;”;
- (iv) in paragraph (d), for the words from “under” to the end, substitute “to be carried out for the purposes of Article 108(3) of TFEU;”;
- (v) in paragraph (e), for “European Commission”, substitute “CMA”;
- (vi) in paragraphs (f) and (g), for “Commission” in each place it occurs, substitute “CMA”;

- (e) omit subsection (9);

- (f) in subsection (10), for the words from “TFEU means” to the end, substitute—

“—

- (a) “CMA” means the Competition and Markets Authority;
- (b) “TFEU” means the Treaty on the Functioning of the European Union; and
- (c) a reference to Article 107(1) or 108(3) of 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 regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019.”.

- (4) In section 256A(b)—

- (a) in subsection (1)(a), for the words from “any of the” to “(“State aid”),” substitute “Article 107(1) or Article 108(3) of the Treaty on the Functioning of the European Union applies, as those Articles have effect in domestic law by virtue of section 4 of the European Union

(a) Section 145A was amended by section 103 of the Financial Services Act 2012 (c. 21) and S.I. 2014/3329.

(b) Section 256A was amended by Schedule 2(1) to the Financial Services (Banking Reform) Act 2013 (c. 33) and S.I. 2014/3329.

(Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019.”;

(b) in subsection (2)—

(i) omit “the United Kingdom to pursue”;

(ii) for “(read with subsection (9) of that section)”, substitute “to be pursued”.

Enterprise and Regulatory Reform Act 2013

4.—(1) The Enterprise and Regulatory Reform Act 2013(a) is amended as follows.

(2) In Schedule 4, after paragraph 29(3), insert—

“(4) In addition to sub-paragraph (1), anything that the CMA Board is required or permitted to do under or by virtue of the state aid legislation may be done by a member of the CMA panel, who is authorised for that purpose by the CMA Board, whether generally or specifically.

(5) In this paragraph, “state aid legislation” means—

(a) the Financial Transparency (EC Directive) Regulations 2009;

(b) 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;

(c) 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;

(d) 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;

(e) the State Aid (EU Exit) Regulations 2019.”.

PART 2

Amendments to UK subordinate legislation

Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003

5.—(1) The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003(b) is amended as follows.

(2) In the Schedule, in the definition of “aid” in paragraph 1, for “Article 107 of the treaty on the Functioning of the European Union”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

(a) 2013 c. 24.

(b) S.I. 2003/1370, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.

Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003

6.—(1) The Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003(**a**) is amended as follows.

(2) In the Schedule, in paragraph 4, for “Article 87 of the EC Treaty”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Water Mergers (Determination of Turnover) Regulations 2004

7.—(1) The Water Mergers (Determination of Turnover) Regulations 2004(**b**) are amended as follows.

(2) In the Schedule, in paragraph 1, for “Article 107 of the treaty on the Functioning of the European Union”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005

8.—(1) The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005(**c**) are amended as follows.

(2) In regulation 2(2), for “incompatible with the internal market within the meaning of Article 107 of the Treaty”, substitute “prohibited by Article 107(1) of the Treaty, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Water Industry (Determination of Turnover for Penalties) Order 2005

9.—(1) The Water Industry (Determination of Turnover for Penalties) Order 2005(**d**) is amended as follows.

(2) In article 2(1), in the definition of “aid”, for “Article 107 of the treaty on the Functioning of the European Union”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Pension Protection Fund (Entry Rules) Regulations 2005

10.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(**e**) are amended as follows.

(2) In regulation 2(1A), for “incompatible with the internal market within the meaning of Article 107 of the Treaty”, substitute “prohibited by Article 107(1) of the Treaty, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

(a) S.I. 2003/2712.

(b) S.I. 2004/3206, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.

(c) S.I. 2005/277, amended by S.I. 2010/196; there are other amending instruments but none is relevant.

(d) S.I. 2005/477, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.

(e) S.I. 2005/590, to which there are amendments not relevant to these Regulations.

Mobile Roaming (European Communities) Regulations 2007

11.—(1) The Mobile Roaming (European Communities) Regulations 2007(a) are amended as follows.

(2) In regulation 6(4), for “Article 107 of the treaty on the Functioning of the European Union”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Community Infrastructure Levy Regulations 2010

12.—(1) The Community Infrastructure Levy Regulations 2010(b) are amended as follows.

(2) In regulation 41(1), in the definition of “*State aid*”, after “Union”, insert “, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

(3) In each of the following provisions, for “European Commission”, substitute “Competition and Markets Authority”—

- (a) regulation 42A(5);
- (b) regulation 42A(6);
- (c) regulation 44(5);
- (d) regulation 45(2)(b);
- (e) regulation 54A(10);
- (f) regulation 54A(11);
- (g) regulation 55(3)(c)(iii).

Climate Change Agreements (Administration) Regulations 2012

13.—(1) The Climate Change Agreements (Administration) Regulations 2012(c) are amended as follows.

(2) In regulation 17(1)—

- (a) for “incompatible with the internal market within the meaning of”, substitute “prohibited by”;
- (b) after “Union”, insert “, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Payment of Pension Levies for Past Periods Regulations 2014

14.—(1) The Payment of Pension Levies for Past Periods Regulations 2014(d) are amended as follows.

(2) In regulation 3(6), after “October 2014”, insert “but before exit day”.

(3) After regulation 3(6), insert—

“(6A) Where any anniversary of the interest start date falls on or after exit day, the interest rate to be applied during the year from that anniversary date is the CMA recovery interest rate.

(6B) For the purposes of paragraph (6A), “CMA recovery interest rate” means the rate referred to in regulation 58(1) of the State Aid (EU Exit) Regulations 2019.”.

(a) S.I. 2007/1933, amended by S.I. 2012/1809; there are other amending instruments but none is relevant.

(b) S.I. 2010/948, amended by S.I. 2014/385; there are other amending instruments but none is relevant.

(c) S.I. 2012/1976, to which there are amendments not relevant to these Regulations.

(d) S.I. 2014/2939.

(4) In regulation 3(7), after “794/2004”, insert “(as it had effect immediately before exit day)”.

Bank Recovery and Resolution (No. 2) Order 2014

15.—(1) The Bank Recovery and Resolution (No. 2) Order 2014(**a**) is amended as follows.

(2) In Article 159(2), at the appropriate place insert—

““State aid framework” means the framework established by—

- (a) Articles 107(1) and 108(3) of the Treaty on the Functioning of the European Union (as those Articles have effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019);
- (b) the State Aid (EU Exit) Regulations 2019;
- (c) any other retained EU law relating to state aid; and
- (d) any statements of policy published by the Competition and Markets Authority under the State Aid (EU Exit) Regulations 2019.”.

(3) In Article 161(3)(b)—

- (a) for “European Commission”, substitute “Competition and Markets Authority”;
- (b) omit “Union”;
- (c) omit the “and” at the end.

(4) In Article 165(2), at the appropriate place insert—

““State aid framework” has the meaning given in Article 159(2);”.

(5) In Article 168(3)(b)—

- (a) for “European Commission”, substitute “Competition and Markets Authority”;
- (b) omit “Union”;
- (c) omit the “and” at the end.

Open Internet Access (EU Regulation) Regulations 2016

16.—(1) The Open Internet Access (EU Regulation) Regulations 2016(**b**) are amended as follows.

(2) In regulation 24(4), for “Article 107 of the Treaty on the Functioning of the European Union”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

PART 3

Amendments to devolved legislation

CHAPTER 1

Scotland

(a) S.I. 2014/3348, amended by S.I. 2016/1239 and S.I. 2017/80.

(b) S.I. 2016/607.

Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010

17.—(1) The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010(a) are amended as follows.

(2) In regulation 3C(3), for “compatible with Article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2012

18.—(1) The Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2012(b) are amended as follows.

(2) In regulation 5(3), for “compatible with article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2016

19.—(1) The Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2016(c) are amended as follows.

(2) In regulation 5(3), for “compatible with Article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Non-Domestic Rates (Steel Sites) (Scotland) Regulations 2016

20.—(1) The Non-Domestic Rates (Steel Sites) (Scotland) Regulations 2016(d) are amended as follows.

(2) In regulation 3(4), for “compatible with Article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017

21.—(1) The Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017(e) are amended as follows.

(2) In regulation 4(3), for “compatible with Article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by

(a) S.S.I. 2010/44, amended by S.S.I. 2016/121, S.S.I. 2017/60 and S.S.I. 2018/64; there are other amending instruments but none is relevant.

(b) S.S.I. 2012/48, to which there are amendments not relevant to these Regulations.

(c) S.S.I. 2016/119.

(d) S.S.I. 2016/120.

(e) S.S.I. 2017/61.

virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017

22.—(1) The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017(a) are amended as follows.

(2) In regulation 16, for “compatible with article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018

23.—(1) The Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018(b) are amended as follows.

(2) In regulation 5, for “compatible with article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union”, substitute “not prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

CHAPTER 2

Northern Ireland

Rates (Northern Ireland) Order 1977

24.—(1) The Rates (Northern Ireland) Order 1977(c) is amended as follows.

(2) In Article 31D(8)(b), for “an EU obligation”, substitute “a retained EU obligation”.

Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996

25.—(1) The Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996(d) are amended as follows.

(2) In each of the following provisions, for “European Commission”, substitute “Competition and Markets Authority”—

- (a) Schedule 2, Part 1, paragraph 26;
- (b) Schedule 2, Part 2, paragraph 22;
- (c) Schedule 2, Part 3, paragraph 25;
- (d) Schedule 2, Part 4, paragraph 21.

Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations (Northern Ireland) 2005

26.—(1) The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations (Northern Ireland) 2005(e) are amended as follows.

(a) S.S.I. 2017/85, to which there are amendments not relevant to these Regulations.
(b) S.S.I. 2018/65, to which there are amendments not relevant to these Regulations.
(c) S.I. 1977/2157 (N.I. 28), amended by S.R. 2016 No. 18; there are other amending instruments but none is relevant.
(d) S.R. 1996 No. 447, amended by S.R. 2013 No 281; there are other amending instruments but none is relevant.
(e) S.R. 2005 No. 55, amended by S.R. 2010 No. 32; there are other amending instruments but none is relevant.

(2) In regulation 2(2), for “incompatible with the internal market within the meaning of Article 107 of the Treaty”, substitute “prohibited by Article 107(1) of the Treaty, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

27.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(a) are amended as follows.

(2) In regulation 2(1A), for “incompatible with the internal market within the meaning of Article 107 of the Treaty on the Functioning of the European Union”, substitute “prohibited by Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Water Industry (Determination of Turnover for Penalties) Order (Northern Ireland) 2007

28.—(1) The Water Industry (Determination of Turnover for Penalties) Order (Northern Ireland) 2007(b) is amended as follows.

(2) In article 2(1), in the definition of “aid”, for “Article 87 of the Treaty establishing the European Community”, substitute “Article 107(1) of the Treaty on the Functioning of the European Union, as that Article has effect in domestic law by virtue of section 4 of the European Union (Withdrawal) Act 2018 and regulation 3(1) and (2) of the State Aid (EU Exit) Regulations 2019”.

Payment of Pension Levies for Past Periods Regulations (Northern Ireland) 2015

29.—(1) The Payment of Pension Levies for Past Periods Regulations (Northern Ireland) 2015(c) are amended as follows.

(2) In regulation 3(6), after “November 2015”, insert “but before exit day”.

(3) After regulation 3(6), insert—

“(6A) Where any anniversary of the interest start date falls on or after exit day, the interest rate to be applied during the year from that anniversary date is the CMA recovery interest rate.

(6B) For the purposes of paragraph (6A), “CMA recovery interest rate” means the rate referred to in regulation 58(1) of the State Aid (EU Exit) Regulations 2019.”.

(4) In regulation 3(7), after “794/2004”, insert “(as it had effect immediately before exit day)”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16) (the Act) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of state aid. The main amendments made by these Regulations include—

(a) S.R. 2005 No. 126, amended by S.R. 2010 No. 32; there are other amending instruments but none is relevant.

(b) S.R. 2007 No. 205.

(c) S.R. 2015 No. 402.

- (a) transferring state aid regulatory functions of the European Commission to the Competition and Markets Authority (CMA);
- (b) replacing references to the European Commission assessing compatibility of state aid with the internal market to the CMA deciding whether to approve state aid;
- (c) replacing the test of whether state aid affects trade between Member States with a test of whether state aid affects trade between the United Kingdom and the European Union;
- (d) restating large parts of the EU procedural provisions with appropriate deficiency corrections.

Part 2 amends retained EU law relating to the state aid framework that continues to be, or forms part of, domestic law by virtue of section 4 of the Act.

Parts 3 to 6, and Chapter 1 of Part 7, amend retained EU law relating to procedural and enforcement matters that continue to be, or form part of, domestic law by virtue of section 3 of the Act. In summary, Part 3 sets out the process for the CMA to examine notified aid, unlawful aid, misused aid and existing aid schemes. Part 4 includes provisions relating to enforcement. Part 5 includes provisions relating to monitoring and reporting of aid. Part 6 requires the CMA to adopt and publish statements of policy. Chapter 1 of Part 7 includes general provisions relating to aid in urgent cases, interest rates and time periods.

Chapter 2 of Part 7 revokes certain retained EU law, inserts a schedule that contains transitional provisions and inserts schedules that make amendments to retained EU law and other legislation. In particular, Schedule 8 includes transitional provisions setting out how these Regulations apply in relation to aid granted before exit day. Schedule 9 contains amendments to the General Block Exemption Regulation and Schedule 10 contains amendments to other legislation, including the Enterprise Act 2002 (c.40) and the Enterprise and Regulatory Reform Act 2013 (c.24).

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

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