



# Competition Act 1998

## 1998 CHAPTER 41

An Act to make provision about competition and the abuse of a dominant position in the market; to confer powers in relation to investigations conducted in connection with [<sup>F1</sup>Article 81 or 82] of the treaty establishing the European Community; to amend the Fair Trading Act 1973 in relation to information which may be required in connection with investigations under that Act; to make provision with respect to the meaning of “supply of services” in the Fair Trading Act 1973; and for connected purposes. [9th November 1998]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Textual Amendments

- F1** Words in long title substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), [Sch. 1 para. 1](#)

### Modifications etc. (not altering text)

- C1** Act: power to modify conferred (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 209\(1\), 279](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#)

## PART I

### COMPETITION

### Modifications etc. (not altering text)

- C2** Pt. 1: certain functions made exercisable concurrently (26.11.1998 for certain purposes and *prosp.* otherwise) by [1984 c. 12](#), [s. 50\(3\)](#) (as substituted by [1998 c. 41](#), [s. 66\(5\)](#), [Sch. 10 Pt. II para. 2\(6\)](#) (with [s. 73](#)); [S.I. 1998/2750](#), [art. 2](#))

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- C3** Pt. 1 (except ss. 38(1)-(6), 51) amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(3)**, 89 (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. 1**
- C4** Pt. 1 (except ss. 38(1)-(6), 51, 52(6) and (8) and 54) amended (1.2.2001) by 2000 c. 38, **s. 86(4)(b)(5)** (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. 1**  
Pt. 1 (except ss. 38(1)-(6), 51) amended (1.2.2001) by 2000 c. 38, **s. 86(7)(b)** (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. 1**
- C5** Pt. 1 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), **ss. 371(3)**, 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- C6** Pt. 1 certain functions made exercisable concurrently by 1998 c. 41, s. 67(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 6(2)(a)**)
- C7** Pt. 1 certain functions made exercisable concurrently by 1991 c. 56, s. 31(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 4(2)(a)**)
- C8** Pt. 1 certain functions made exercisable concurrently by S.I. 1992/231 (N.I. 1) art. 46(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 5(2)(a)**)
- C9** Pt. 1 certain functions made exercisable concurrently by 1986 c. 44, s. 36A(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 1(2)(a)**)
- C10** Pt. 1 restricted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), regs. 1(a), **9(2)**
- C11** Pt. 1 certain functions made exercisable concurrently by 1989 c. 29, s. 43(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 3(2)(a)**)
- C12** Pt. 1 certain functions made exercisable concurrently by S.I. 1996/275 (N.I. 2), art. 23(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 9(2)(a)**)
- C13** Pt. 1 certain functions made exercisable concurrently (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336), arts. 1(2), **29(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, art. 2(2), Sch. Pt. 2 (with Sch. 2)
- C14** Pt. 1 modified (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336), arts. 1(2), **29(5)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, art. 2(2), Sch. Pt. 2 (with Sch. 2)
- C15** Pt. 1 modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 72(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- C16** Pt. 1 functions made exercisable concurrently (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 62(1)-(3)**, 110(1) (with s. 77(1)-(3), Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(1)-(3)
- C17** Pt. 1 modified in part (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 62(4)**, 110(1) (with ss. 62(5), 77(1)-(3), Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(1)-(3)
- C18** Pt. 1 certain functions made exercisable concurrently by 2000 c. 8, s. 234J (as inserted (1.11.2014 for specified purposes, 1.4.2015 so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 8 para. 3**; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v))
- C19** Pt. 1 certain functions made exercisable concurrently (1.11.2014 for specified purposes, 1.4.2015 so far as not already in force) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 61(2)**, 148(5); S.I. 2014/2458, arts. 2(a)(i), 3(b)(ii)

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## CHAPTER I

### AGREEMENTS

#### *Introduction*

#### **1 Enactments replaced.**

The following shall cease to have effect—

- (a) the Restrictive Practices Court Act 1976 (c. 33),
- (b) the Restrictive Trade Practices Act 1976 (c. 34),
- (c) the Resale Prices Act 1976 (c. 53), and
- (d) the Restrictive Trade Practices Act 1977 (c. 19).

#### **Commencement Information**

- 11** S. 1 partly in force; s. 1 was not in force at Royal Assent, see. s. 76(2)(3); s. 1(b) to (d) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)
- 12** S. 1(a) in force at 10.3.2013 by [S.I. 2013/284, art. 2\(a\)](#)

#### *The prohibition*

#### **2 Agreements etc. preventing, restricting or distorting competition.**

- (1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—
  - (a) may affect trade within the United Kingdom, and
  - (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom,are prohibited unless they are exempt in accordance with the provisions of this Part.
- (2) Subsection (1) applies, in particular, to agreements, decisions or practices which—
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.
- (4) Any agreement or decision which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).

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- (6) Subsection (5) does not apply where the context otherwise requires.
- (7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.
- (8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

<b>Modifications etc. (not altering text)</b>	
<b>C20</b>	S. 2(1) excluded (18.6.2001) by 2000 c. 8, <b>ss. 164(1)(2)(4)</b> ; S.I. 2001/1820, art. 2, <b>Sch.</b> S. 2(1) excluded (3.9.2001) by 2000 c. 8, <b>s. 311(9)</b> ; S.I. 2001/2632, art. 2(2), <b>Sch. Pt. 2</b>
<b>C21</b>	S. 2(1) excluded (28.3.2012) by The Competition Act 1998 (Public Policy Exclusion) Order 2012 (S.I. 2012/710), arts. 1, <b>4</b>
<b>C22</b>	S. 2(1) excluded (E.) (28.3.2020) by The Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/368), arts. 1(1), <b>4</b> (with art. 1(2))
<b>C23</b>	S. 2(1) excluded (28.3.2020) by The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/369), arts. 1, <b>6</b>
<b>C24</b>	S. 2(1) excluded (28.3.2020) by The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/369), arts. 1, <b>5</b>
<b>C25</b>	S. 2(1) excluded (28.3.2020) by The Competition Act 1998 (Solent Maritime Crossings) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/370), arts. 1, <b>4</b>
<b>C26</b>	S. 2(1) excluded (21.4.2020) by The Competition Act 1998 (Health Services for Patients in Wales) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/435), arts. 1(1), <b>4</b> (with art. 1(2))
<b>C27</b>	S. 2(1) excluded (temp.) (2.5.2020) by The Competition Act 1998 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/481), arts. 1, <b>5, 6</b> (with art. 10)
<b>C28</b>	S. 2(5) applied (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), regs. 1(a), <b>7(3)</b>

*Excluded agreements*

**3 Excluded agreements.**

- (1) The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of—
  - (a) Schedule 1 (mergers and concentrations);
  - (b) Schedule 2 (competition scrutiny under other enactments);
  - (c) Schedule 3 (planning obligations and other general exclusions). <sup>F2</sup>...
  - <sup>F3</sup>(d) .....
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter I prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend Schedule 3, with respect to the Chapter I prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision—



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- (i) added by an order under this subsection; or
  - (ii) included in paragraph 1, 2, 8 or 9 of Schedule 3.
- (4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Secretary of State that agreements which fall within the additional exclusion—
- (a) do not in general have an adverse effect on competition, or
  - (b) are, in general, best considered under Chapter II or [<sup>F4</sup>the <sup>M1</sup>Fair Trading Act 1973][<sup>F4</sup>the Enterprise Act 2002].
- (5) An order under subsection (2)(a) or (3)(a) may include provision (similar to that made with respect to any other exclusion provided by the relevant Schedule) for the exclusion concerned to cease to apply to a particular agreement.
- (6) Schedule 3 also gives the Secretary of State power to exclude agreements from the Chapter I prohibition in certain circumstances.

#### Textual Amendments

- F2** Word in s. 3(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/766, art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))
- F3** S. 3(1)(d) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 207, 279, [Sch. 26](#) (with [Sch. 24](#) paras. 20, 22); S.I. 2003/766, art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))
- F4** Words in s. 3(4)(b) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(2\)](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with [art. 3\(1\)](#)); S.I. 2004/3233, art. 2, [Sch.](#) (with [arts. 3-5](#))

#### Commencement Information

- I3** S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 76(3); s. 3(1)(b) in force for certain purposes at 11.1.1999 and s. 3(1)(a)(c)(d)(2)-(6) in force at 11.1.1999 by S.I. 1998/3166, art. 2, [Sch.](#); s. 3(1)(b) fully in force at 1.3.2000 by S.I. 2000/344, art. 2, [Sch.](#)

#### Marginal Citations

- M1** 1973 c. 41.

### Exemptions

#### 4 Individual exemptions.

- [<sup>F5</sup>(1) The [<sup>F6</sup>OFT] may grant an exemption from the Chapter I prohibition with respect to a particular agreement if—
- (a) a request for an exemption has been made to [<sup>F6</sup>it] under section 14 by a party to the agreement; and
  - (b) the agreement is one to which section 9 applies.
- (2) An exemption granted under this section is referred to in this Part as an individual exemption.
- (3) The exemption—
- (a) may be granted subject to such conditions or obligations as the [<sup>F6</sup>OFT] considers it appropriate to impose; and

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- (b) has effect for such period as the [F6OFT] considers appropriate.
- (4) That period must be specified in the grant of the exemption.
- (5) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.
- (6) On an application made in such way as may be specified by rules under section 51, the [F6OFT] may extend the period for which an exemption has effect; but, if the rules so provide, [F6it] may do so only in specified circumstances.]

#### Textual Amendments

- F5** S. 4 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 2** (with reg. 6(2))
- F6** Words in s. 4 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(3)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

## 5 Cancellation etc. of individual exemptions.

- [F7(1) If the [F8OFT] has reasonable grounds for believing that there has been a material change of circumstance since [F8it] granted an individual exemption, [F8it] may by notice in writing—
- (a) cancel the exemption;
  - (b) vary or remove any condition or obligation; or
  - (c) impose one or more additional conditions or obligations.
- (2) If the [F8OFT] has a reasonable suspicion that the information on which [F8it] based [F8its] decision to grant an individual exemption was incomplete, false or misleading in a material particular, [F8it] may by notice in writing take any of the steps mentioned in subsection (1).
- (3) Breach of a condition has the effect of cancelling the exemption.
- (4) Failure to comply with an obligation allows the [F8OFT], by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the [F8OFT] under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.
- (6) If an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.
- (7) The [F8OFT] may act under subsection (1), (2) or (4) on [F8its] own initiative or on a complaint made by any person.]

#### Textual Amendments

- F7** S. 5 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 3** (with reg. 6(2)(3))
- F8** Words in s. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(4)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

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## 6 Block exemptions.

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the [F9CMA], likely to be [F10exempt agreements], the [F9CMA] may recommend that the Secretary of State make an order specifying that category for the purposes of this section.
- (2) The Secretary of State may make an order (“a block exemption order”) giving effect to such a recommendation—
  - (a) in the form in which the recommendation is made; or
  - (b) subject to such modifications as he considers appropriate.
- (3) An agreement which falls within a category specified in a block exemption order is exempt from the Chapter I prohibition.
- (4) An exemption under this section is referred to in this Part as a block exemption.
- (5) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.
- (6) A block exemption order may provide—
  - (a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement;
  - (b) that if there is a failure to comply with an obligation imposed by the order, the [F9CMA] may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the [F9CMA] considers that a particular agreement is not [F11an exempt agreement], [F12it] may cancel the block exemption in respect of that agreement.
- (7) A block exemption order may provide that the order is to cease to have effect at the end of a specified period.
- [F13(8) In this section—
  - “exempt agreement” means an agreement which is exempt from the Chapter I prohibition as a result of section 9; and
  - “specified” means specified in a block exemption order.]

### Textual Amendments

- F9** Word in s. 6(1)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 2](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in s. 6(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 4\(2\)](#)
- F11** Words in s. 6(6)(c) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 4\(3\)](#)
- F12** Word in s. 6(6)(c) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(5\)\(b\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F13** S. 6(8) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 4\(4\)](#)

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## 7 Block exemptions: opposition.

- [<sup>F14</sup>(1) A block exemption order may provide that a party to an agreement which—
- (a) does not qualify for the block exemption created by the order, but
  - (b) satisfies specified criteria,
- may notify the [<sup>F15</sup>OFT] of the agreement for the purposes of subsection (2).
- (2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) is to be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the [<sup>F15</sup>OFT]—
- (a) is opposed to its being so treated; and
  - (b) gives notice in writing to the party concerned of [<sup>F15</sup>its] opposition before the end of that period.
- (3) If the [<sup>F15</sup>OFT] gives notice of [<sup>F15</sup>its] opposition under subsection (2), the notification under subsection (1) is to be treated as both notification under section 14 and as a request for an individual exemption made under subsection (3) of that section.
- (4) In this section “notice period” means such period as may be specified with a view to giving the [<sup>F15</sup>OFT] sufficient time to consider whether to oppose under subsection (2).]

### Textual Amendments

- F14** S. 7 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 5** (with reg. 6(2))
- F15** Words in s. 7 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(6)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

## 8 Block exemptions: procedure.

- (1) Before making a recommendation under section 6(1), the [<sup>F16</sup>CMA] must—
- (a) publish details of [<sup>F17</sup>its] proposed recommendation in such a way as [<sup>F17</sup>it] thinks most suitable for bringing it to the attention of those likely to be affected; and
  - (b) consider any representations about it which are made to [<sup>F17</sup>it].
- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the [<sup>F16</sup>CMA] of the proposed modifications and take into account any comments made by the [<sup>F16</sup>CMA] .
- (3) If, in the opinion of the [<sup>F16</sup>CMA] , it is appropriate to vary or revoke a block exemption order [<sup>F18</sup>it] may make a recommendation to that effect to the Secretary of State.
- (4) Subsection (1) also applies to any proposed recommendation under subsection (3).
- (5) Before exercising [<sup>F17</sup>its] power to vary or revoke a block exemption order (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—
- (a) inform the [<sup>F19</sup>CMA] of the proposed variation or revocation; and
  - (b) take into account any comments made by the [<sup>F19</sup>CMA] .

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- (6) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

#### Textual Amendments

- F16** Word in s. 8(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 3](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F17** Word in s. 8(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(7\)\(b\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F18** Word in s. 8(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(7\)\(c\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F19** Word in s. 8(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 3](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 9 [F20 Exempt agreements].

[F21(1)] [F22 An agreement is exempt from the Chapter I prohibition if it]—

- (a) contributes to—
- (i) improving production or distribution, or
  - (ii) promoting technical or economic progress,
- while allowing consumers a fair share of the resulting benefit; [F23 and]
- (b) does not—
- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
  - (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

[F24(2) In any proceedings in which it is alleged that the Chapter I prohibition is being or has been infringed by an agreement, any undertaking or association of undertakings claiming the benefit of subsection (1) shall bear the burden of proving that the conditions of that subsection are satisfied.]

#### Textual Amendments

- F20** Words in s. 9 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 6\(5\)](#)
- F21** S. 9(1): s. 9 renumbered as s. 9(1) (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 6\(1\)](#)
- F22** Words in s. 9(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 6\(2\)](#)
- F23** Word in s. 9(1)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 6\(3\)](#)
- F24** S. 9(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 6\(4\)](#)

## 10 Parallel exemptions.

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from [F25 the European Union] prohibition—

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- (a) by virtue of a Regulation, [<sup>F26</sup>or
  - (b) because of a decision of the Commission under Article 10 of the EC Competition Regulation.]
- (2) An agreement is exempt from the Chapter I prohibition if it does not affect trade between Member States but otherwise falls within a category of agreement which is exempt from [<sup>F25</sup>the European Union] prohibition by virtue of a Regulation.
- (3) An exemption from the Chapter I prohibition under this section is referred to in this Part as a parallel exemption.
- (4) A parallel exemption—
- (a) takes effect on the date on which the relevant exemption from [<sup>F25</sup>the European Union] prohibition takes effect or, in the case of a parallel exemption under subsection (2), would take effect if the agreement in question affected trade between Member States; and
  - (b) ceases to have effect—
    - (i) if the relevant exemption from the [<sup>F25</sup>the European Union] prohibition ceases to have effect; or
    - (ii) on being cancelled by virtue of subsection (5) or (7).
- (5) In such circumstances and manner as may be specified in rules made under section 51, the [<sup>F27</sup>CMA] may—
- (a) impose conditions or obligations subject to which a parallel exemption is to have effect;
  - (b) vary or remove any such condition or obligation;
  - (c) impose one or more additional conditions or obligations;
  - (d) cancel the exemption.
- (6) In such circumstances as may be specified in rules made under section 51, the date from which cancellation of an exemption is to take effect may be earlier than the date on which notice of cancellation is given.
- (7) Breach of a condition imposed by the [<sup>F28</sup>CMA] has the effect of cancelling the exemption.
- (8) In exercising [<sup>F29</sup>its] powers under this section, the [<sup>F30</sup>CMA] may require any person who is a party to the agreement in question to give [<sup>F29</sup>it] such information as [<sup>F29</sup>it] may require.
- (9) For the purpose of this section references to an agreement being exempt from [<sup>F25</sup>the European Union] prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation [<sup>F31</sup>other than the EC Competition Regulation] or a decision by the Commission.
- (10) In this section—
- “[<sup>F25</sup>the European Union] prohibition” means the prohibition contained in—
    - (a) [<sup>F32</sup>Article 101(1)]
    - (b) any corresponding provision replacing, or otherwise derived from, that provision;
    - (c) such other Regulation as the Secretary of State may by order specify; and



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“Regulation” means a Regulation adopted by the Commission or by the Council.

- (11) This section has effect in relation to the prohibition contained in paragraph 1 of Article 53 of the EEA Agreement (and the EFTA Surveillance Authority) as it has effect in relation to [<sup>F25</sup>the European Union] prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.

#### Textual Amendments

- F25** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F26** S. 10(1)(b) and word substituted for s. 10(1)(b)(c) (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 7(2)** (with reg. 7)
- F27** Word in s. 10(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 4** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F28** Word in s. 10(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 4** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F29** Words in s. 10(8) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(8)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F30** Word in s. 10(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 4** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F31** Words in s. 10(9) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 7(3)**
- F32** Words in s. 10(10) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

## 11 Exemption for certain other agreements.

- (1) The fact that a ruling may be given by virtue of [<sup>F33</sup>Article 104] of the Treaty on the question whether or not agreements of a particular kind are prohibited by [<sup>F33</sup>Article 101(1)] does not prevent such agreements from being subject to the Chapter I prohibition.
- (2) But the Secretary of State may by regulations make such provision as he considers appropriate for the purpose of granting an exemption from the Chapter I prohibition, in prescribed circumstances, in respect of such agreements.
- (3) An exemption from the Chapter I prohibition by virtue of regulations under this section is referred to in this Part as a section 11 exemption.

#### Textual Amendments

- F33** Words in s. 11(1) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

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### Notification

## 12 Requests for [F34OFT] to examine agreements.

- [F35](1) Sections 13 and 14 provide for an agreement to be examined by the [F34OFT] on the application of a party to the agreement who thinks that it may infringe the Chapter I prohibition.
- (2) Schedule 5 provides for the procedure to be followed—
- (a) by any person making such an application; and
  - (b) by the [F34OFT], in considering such an application.
- (3) The Secretary of State may by regulations make provision as to the application of sections 13 to 16 and Schedule 5, with such modifications (if any) as may be prescribed, in cases where the [F34OFT]—
- (a) has given a direction withdrawing an exclusion; or
  - (b) is considering whether to give such a direction.]

#### Textual Amendments

- F34** Words in s. 12 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(9\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F35** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))

#### Commencement Information

- I4** S. 12 wholly in force; s. 12 not in force at Royal Assent see s. 76(3); s. 12(3) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); s. 12(1)(2) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

## 13 Notification for guidance.

- [F35](1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [F36OFT] of the agreement; and
  - (b) apply to [F36the OFT] for guidance.
- (2) On an application under this section, the [F36OFT] may give the applicant guidance as to whether or not, in [F36its] view, the agreement is likely to infringe the Chapter I prohibition.
- (3) If the [F36OFT] considers that the agreement is likely to infringe the prohibition if it is not exempt, [F36its] guidance may indicate—
- (a) whether the agreement is likely to be exempt from the prohibition under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (b) whether [F36it] would be likely to grant the agreement an individual exemption if asked to do so.

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- (4) If an agreement to which the prohibition applies has been notified to the [F36OFT] under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the [F36OFT] when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.]

#### Textual Amendments

- F35** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F36** Words in s. 13 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(10\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

#### Modifications etc. (not altering text)

- C29** S. 13 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 4](#)

## 14 Notification for a decision.

- [F35(1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [F37OFT] of the agreement; and
  - (b) apply to [F37the OFT] for a decision.
- (2) On an application under this section, the [F37OFT] may make a decision as to—
- (a) whether the Chapter I prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.
- (3) If an agreement is notified to the [F37OFT] under this section, the application may include a request for the agreement to which it relates to be granted an individual exemption.
- (4) If an agreement to which the prohibition applies has been notified to the [F37OFT] under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the [F37OFT] when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.]

#### Textual Amendments

- F35** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))

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**F37** Words in s. 14 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(11); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**Modifications etc. (not altering text)**

**C30** S. 14 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 5

**15 Effect of guidance.**

- [<sup>F35</sup>(1) This section applies to an agreement if the [<sup>F38</sup>OFT] has determined an application under section 13 by giving guidance that—
- (a) the agreement is unlikely to infringe the Chapter I prohibition, regardless of whether or not it is exempt;
  - (b) the agreement is likely to be exempt under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (c) [<sup>F38</sup>it] would be likely to grant the agreement an individual exemption if asked to do so.
- (2) The [<sup>F38</sup>OFT] is to take no further action under this Part with respect to an agreement to which this section applies, unless—
- (a) [<sup>F38</sup>it] has reasonable grounds for believing that there has been a material change of circumstance since [<sup>F38</sup>it] gave [<sup>F38</sup>its] guidance;
  - (b) [<sup>F38</sup>it] has a reasonable suspicion that the information on which [<sup>F38</sup>it] based [<sup>F38</sup>its] guidance was incomplete, false or misleading in a material particular;
  - (c) one of the parties to the agreement applies to [<sup>F38</sup>it] for a decision under section 14 with respect to the agreement; or
  - (d) a complaint about the agreement has been made to [<sup>F38</sup>it] by a person who is not a party to the agreement.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the [<sup>F38</sup>OFT] may remove the immunity given by subsection (3) if—
- (a) [<sup>F38</sup>it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [<sup>F38</sup>it] considers it likely that the agreement will infringe the prohibition; and
  - (c) [<sup>F38</sup>it] gives notice in writing to the party on whose application the guidance was given that [<sup>F38</sup>it] is removing the immunity as from the date specified in [<sup>F38</sup>its] notice.
- (5) If the [<sup>F38</sup>OFT] has a reasonable suspicion that information—
- (a) on which [<sup>F38</sup>it] based [<sup>F38</sup>its] guidance, and
  - (b) which was provided to [<sup>F38</sup>it] by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

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#### Textual Amendments

- F35** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F38** Words in s. 15 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, [Sch. 25 para. 38\(12\)](#); S.I. 2003/766, art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))

#### Modifications etc. (not altering text)

- C31** S. 15 applied (with modifications) (1.3.2000) by S.I. 2000/263, [art. 6](#)

## 16 Effect of a decision that the Chapter I prohibition has not been infringed.

- [<sup>F35</sup>(1) This section applies to an agreement if the [<sup>F39</sup>OFT] has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The [<sup>F39</sup>OFT] is to take no further action under this Part with respect to the agreement unless—
- [<sup>F39</sup>it] has reasonable grounds for believing that there has been a material change of circumstance since [<sup>F39</sup>it] gave [<sup>F39</sup>its] decision; or
  - [<sup>F39</sup>it] has a reasonable suspicion that the information on which [<sup>F39</sup>it] based [<sup>F39</sup>its] decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the [<sup>F39</sup>OFT] may remove the immunity given by subsection (3) if—
- [<sup>F39</sup>it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - [<sup>F39</sup>it] considers that it is likely that the agreement will infringe the prohibition; and
  - [<sup>F39</sup>it] gives notice in writing to the party on whose application the decision was made that [<sup>F39</sup>it] is removing the immunity as from the date specified in [<sup>F39</sup>its] notice.
- (5) If the [<sup>F39</sup>OFT] has a reasonable suspicion that information—
- on which [<sup>F39</sup>it] based [<sup>F39</sup>its] decision, and
  - which was provided to [<sup>F39</sup>it] by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

#### Textual Amendments

- F35** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F39** Words in s. 16 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, [Sch. 25 para. 38\(13\)](#); S.I. 2003/766, art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))

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**Modifications etc. (not altering text)**

**C32** S. 16 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), **art. 7**

## CHAPTER II

### ABUSE OF DOMINANT POSITION

#### *Introduction*

**17 Enactments replaced.**

Sections 2 to 10 of the <sup>M2</sup>Competition Act 1980 (control of anti-competitive practices) shall cease to have effect.

**Marginal Citations**

**M2** [1980 c. 21](#).

#### *The prohibition*

**18 Abuse of dominant position.**

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section—
 

“dominant position” means a dominant position within the United Kingdom; and

“the United Kingdom” means the United Kingdom or any part of it.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

**Modifications etc. (not altering text)**

**C33** S. 18(1) excluded (18.6.2001) by [2000 c. 8, s. 164\(3\)\(5\)](#); [S.I. 2001/1820](#), **art. 2**, **Sch.**



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s. 18(1) excluded (3.9.2001) by 2000 c. 8, s. 312(2); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

### *Excluded cases*

## **19 Excluded cases.**

- (1) The Chapter II prohibition does not apply in any of the cases in which it is excluded by or as a result of—
  - (a) Schedule 1 (mergers and concentrations); or
  - (b) Schedule 3 (general exclusions).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.
- (4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

### *Notification*

## **20 Requests for [F40OFT] to consider conduct.**

- [F41](1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the [F40OFT] on the application of that person.
- (2) Schedule 6 provides for the procedure to be followed—
  - (a) by any person making an application, and
  - (b) by the [F40OFT], in considering an application.]

### **Textual Amendments**

- F40** Words in s. 20 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(14); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F41** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 9 (with reg. 6(2))

## **21 Notification for guidance.**

- [F41](1) A person who applies for conduct to be considered under this section must—
  - (a) notify the [F42OFT] of it; and
  - (b) apply to [F42the OFT] for guidance.

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

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- (2) On an application under this section, the [F42OFT] may give the applicant guidance as to whether or not, in [F42its] view, the conduct is likely to infringe the Chapter II prohibition.]

#### Textual Amendments

- F41** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F42** Words in s. 21 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(15)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 22 Notification for a decision.

- [F41(1) A person who applies for conduct to be considered under this section must—
- (a) notify the [F43OFT] of it; and
  - (b) apply to [F43the OFT] for a decision.
- (2) On an application under this section, the [F43OFT] may make a decision as to—
- (a) whether the Chapter II prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion.]

#### Textual Amendments

- F41** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F43** Words in s. 22 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(16)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 23 Effect of guidance.

- [F41(1) This section applies to conduct if the [F44OFT] has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The [F44OFT] is to take no further action under this Part with respect to the conduct to which this section applies, unless—
- (a) [F44it] has reasonable grounds for believing that there has been a material change of circumstance since [F44it] gave [F44its] guidance;
  - (b) [F44it] has a reasonable suspicion that the information on which [F44it] based [F44its] guidance was incomplete, false or misleading in a material particular; or
  - (c) a complaint about the conduct has been made to [F44it].
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the [F44OFT] may remove the immunity given by subsection (3) if—
- (a) [F44it] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);

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- (b) [F44:it] considers that it is likely that the conduct will infringe the prohibition; and
  - (c) [F44:it] gives notice in writing to the undertaking on whose application the guidance was given that [F44:it] is removing the immunity as from the date specified in [F44:its] notice.
- (5) If the [F44:OFT] has a reasonable suspicion that information—
- (a) on which [F44:it] based [F44:its] guidance, and
  - (b) which was provided to [F44:it] by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

#### Textual Amendments

- F41** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F44** Words in s. 23 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(17\)](#); S.I. 2003/766, art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 24 Effect of a decision that the Chapter II prohibition has not been infringed.

- [F41(1) This section applies to conduct if the [F45:OFT] has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.
- (2) The [F45:OFT] is to take no further action under this Part with respect to the conduct unless—
- (a) [F45:it] has reasonable grounds for believing that there has been a material change of circumstance since [F45:it] gave [F45:its] decision; or
  - (b) [F45:it] has a reasonable suspicion that the information on which [F45:it] based [F45:its] decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the [F45:OFT] may remove the immunity given by subsection (3) if—
- (a) [F45:it] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) [F45:it] considers that it is likely that the conduct will infringe the prohibition; and
  - (c) [F45:it] gives notice in writing to the undertaking on whose application the decision was made that [F45:it] is removing the immunity as from the date specified in [F45:its] notice.
- (5) If the [F45:OFT] has a reasonable suspicion that information—
- (a) on which [F45:it] based [F45:its] decision, and
  - (b) which was provided to [F45:it] by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

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### Textual Amendments

- F41** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F45** Words in s. 24 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, [Sch. 25 para. 38\(18\)](#); S.I. 2003/766, art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))

## CHAPTER III

### INVESTIGATION AND ENFORCEMENT

#### *Investigations*

#### **[<sup>F46</sup>25 Power of [<sup>F47</sup>CMA] to investigate**

- (1) In any of the following cases, the [<sup>F48</sup>CMA] may conduct an investigation.
- (2) The first case is where there are reasonable grounds for suspecting that there is an agreement which—
  - (a) may affect trade within the United Kingdom; and
  - (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (3) The second case is where there are reasonable grounds for suspecting that there is an agreement which—
  - (a) may affect trade between Member States; and
  - (b) has as its object or effect the prevention, restriction or distortion of competition within [<sup>F25</sup>the European Union].
- (4) The third case is where there are reasonable grounds for suspecting that the Chapter II prohibition has been infringed.
- (5) The fourth case is where there are reasonable grounds for suspecting that the prohibition in [<sup>F49</sup>Article 102] has been infringed.
- (6) The fifth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade within the United Kingdom; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (7) The sixth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade between Member States; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within [<sup>F25</sup>the European Union].
- (8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the [<sup>F50</sup>CMA] —
  - (a) considers that the agreement is exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption; and

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- (b) does not have reasonable grounds for suspecting that the circumstances may be such that it could exercise its power to cancel the exemption.
- (9) Subsection (3) does not permit an investigation to be conducted if the [F50CMA] —
  - (a) considers that the agreement is an agreement to which the prohibition in [F51 Article 101(1)] is inapplicable by virtue of a regulation of the Commission (“the relevant regulation”); and
  - (b) does not have reasonable grounds for suspecting that the conditions set out in Article 29(2) of the EC Competition Regulation for the withdrawal of the benefit of the relevant regulation may be satisfied in respect of that agreement.
- (10) Subsection (6) does not permit an investigation to be conducted in relation to any agreement if the [F50CMA] considers that, at the time in question, the agreement was exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption.
- (11) Subsection (7) does not permit an investigation to be conducted in relation to any agreement if the [F50CMA] considers that, at the time in question, the agreement was an agreement to which the prohibition in [F52 Article 101(1)] was inapplicable by virtue of a regulation of the Commission.
- (12) It is immaterial for the purposes of subsection (6) or (7) whether the agreement in question remains in existence.]

#### Textual Amendments

- F25** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F46** S. 25 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 10**
- F47** Word in s. 25 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 5(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F48** Word in s. 25(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 5(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F49** Words in s. 25(5) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F50** Word in s. 25(8)-(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 5(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F51** Words in s. 25(9)(a) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F52** Words in s. 25(11) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

#### [F53] 25A Power of CMA to publish notice of investigation

- (1) Where the CMA decides to conduct an investigation it may publish a notice which may, in particular—
  - (a) state its decision to do so;
  - (b) indicate which of subsections (2) to (7) of section 25 the investigation falls under;
  - (c) summarise the matter being investigated;

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- (d) identify any undertaking whose activities are being investigated as part of the investigation;
  - (e) identify the market which is or was affected by the matter being investigated.
- (2) Section 57 does not apply to a notice under subsection (1) to the extent that it includes information other than information mentioned in that subsection.
- (3) Subsection (4) applies if—
- (a) the CMA has published a notice under subsection (1) which identifies an undertaking whose activities are being investigated, and
  - (b) the CMA subsequently decides (without making a decision within the meaning given by section 31(2)) to terminate the investigation of the activities of the undertaking so identified.
- (4) The CMA must publish a notice stating that the activities of the undertaking in question are no longer being investigated.]

#### Textual Amendments

- F53** S. 25A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 42(2)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

## 26 [F54]Investigations: powers to require documents and information]

- (1) For the purposes of an investigation [F55 under section 25], the [F56 CMA] may require any person to produce to [F57 it] a specified document, or to provide [F57 it] with specified information, which [F57 it] considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—
- (a) the subject matter and purpose of the investigation; and
  - (b) the nature of the offences created by sections [F58 43 and] 44.
- (4) In subsection (1) “specified” means—
- (a) specified, or described, in the notice; or
  - (b) falling within a category which is specified, or described, in the notice.
- (5) The [F59 CMA] may also specify in the notice—
- (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
- (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
  - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.



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#### Textual Amendments

- F54** S. 26 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 39\(3\), 103\(3\)](#); [S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)
- F55** Words in s. 26(1) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 11](#) (with reg. 6(2))
- F56** Word in s. 26(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 6](#) (with s. 28); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with Sch.)
- F57** Words in s. 26(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(20\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F58** Words in s. 26(3)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 15 para. 9](#); [S.I. 2014/416, art. 2\(1\)\(f\)](#) (with Sch.)
- F59** Word in s. 26(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 6](#) (with s. 28); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with Sch.)

#### Modifications etc. (not altering text)

- C34** S. 26 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))
- C35** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))
- C36** Ss. 26-30 applied by [S.I. 2002/3150 \(N.I. 4\), art. 13C\(2\)](#) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\), arts. 1\(3\), 3](#); [S.R. 2005/514, art. 2](#))

### [<sup>F60</sup>26A Investigations: power to ask questions

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

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- (b) an individual has a current connection with an undertaking if, at the time in question, he or she is so concerned, is so employed or is so otherwise working.
- (7) In this section, a “relevant undertaking” means an undertaking whose activities are being investigated as part of the investigation in question.]

#### Textual Amendments

**F60** S. 26A inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 39(2), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

#### 27 [F61 Power to enter business premises without a warrant]

- (1) Any officer of the [F62 CMA] who is authorised in writing by the [F62 CMA] to do so (“an investigating officer”) may enter [F63 any business premises] in connection with an investigation [F64 under section 25].
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to 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 purpose of the investigation; and
  - (c) indicates the nature of the offences created by sections 42 to 44.
- (3) Subsection (2) does not apply—
- (a) if the [F65 CMA] has a reasonable suspicion that the premises are, or have been, occupied by—
    - (i) a party to an agreement which [F66 it] is investigating [F67 section 25]; or
    - (ii) an undertaking the conduct of which [F66 it] is investigating under [F68 section 25]; or
  - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
  - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (a) take with him such equipment as appears to him to be necessary;
  - (b) require any person on the premises—
    - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
    - (ii) if the document is produced, to provide an explanation of it;
  - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
  - (d) take copies of, or extracts from, any document which is produced;
  - (e) require any information which is [F69 stored in any electronic form] and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and

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(ii) in which it is visible and legible [<sup>F70</sup>or from which it can readily be produced in a visible and legible form].

[<sup>F71</sup>(f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.]

[<sup>F72</sup>(6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.]

#### Textual Amendments

- F61** Words in s. 27 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(6)**
- F62** Word in s. 27(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 7** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F63** Words in s. 27(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(2)(a)**
- F64** Words in s. 27(1) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(2)(b)** (with reg. 6(2))
- F65** Word in s. 27(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 7** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F66** Word in s. 27(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(21)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F67** Words in s. 27(3)(a)(i) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(3)(a)**
- F68** Words in s. 27(3)(a)(ii) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(3)(b)**
- F69** Words in s. 27(5)(e) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(a)**; S.I. 2003/708, art. 2(k)
- F70** Words in s. 27(5)(e) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(b)**; S.I. 2003/708, art. 2(k)
- F71** S. 27(5)(f) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(4)**
- F72** S. 27(6) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(5)**

#### Modifications etc. (not altering text)

- C35** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)
- C36** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), **3**; S.R. 2005/514, art. 2)
- C37** S. 27 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

## 28 [<sup>F73</sup>Power to enter business premises under a warrant].

(1) [<sup>F74</sup>On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—]

(a) there are reasonable grounds for suspecting that there are on [<sup>F75</sup>any business premises] documents—

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- (i) the production of which has been required under section 26 or 27; and
    - (ii) which have not been produced as required;
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on [<sup>F76</sup>any business premises] documents which the [<sup>F77</sup>CMA] has power under section 26 to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
  - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the [<sup>F78</sup>CMA] , and any other of [<sup>F79</sup>the [<sup>F80</sup>“CMA's”] officers whom the [<sup>F78</sup>CMA]] has authorised in writing to accompany the named officer—
  - (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (f) to require any information which is [<sup>F81</sup>stored in any electronic form] and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is visible and legible [<sup>F82</sup>or from which it can readily be produced in a visible and legible form].
- (3) If, in the case of a warrant under subsection (1)(b), [<sup>F83</sup>the court or (as the case may be) the Tribunal] is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- [<sup>F84</sup>(3A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.]
- (4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

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- (5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- [<sup>F85</sup>(7A) An application for a warrant under this section must be made—
- (a) in the case of an application to the court, in accordance with rules of court;
  - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- [<sup>F86</sup>(8) In this section “business premises” has the same meaning as in section 27.]

#### Textual Amendments

- F73** Words in s. 28 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(4)**
- F74** Words in s. 28(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 2(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F75** Words in s. 28(1)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(2)(a)**
- F76** Words in s. 28(1)(b)(i) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(2)(b)**
- F77** Word in s. 28(1)(b)(i) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 8(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F78** Word in s. 28(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 8(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F79** Words in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(2)(b)(ii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F80** Word in s. 28(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 8(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F81** Words in s. 28(2)(f) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(a)**; S.I. 2003/708, art. 2(k)
- F82** Words in s. 28(2)(f) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(b)**; S.I. 2003/708, art. 2(k)
- F83** Words in s. 28(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 2(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F84** S. 28(3A) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 203(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.
- F85** S. 28(7A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 2(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F86** S. 28(8) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(3)**

#### Modifications etc. (not altering text)

- C35** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)

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- C36** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; S.R. 2005/514, art. 2)
- C38** S. 28 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)
- C39** S. 28(2): powers of seizure extended (prosp.) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), **Sch. 1 Pt. 1 para. 67**
- C40** S. 28(2) powers of seizure extended (1.6.2004) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), ss. 50, 138(2), **Sch. 1 para. 67** (with ss. 52-54, 68); S.I. 2004/1376, art. 2(b)
- C41** S. 28(2)(f) modified (prosp.) by 2001 c. 16, **ss. 63(2)(h)**, 138(2)
- C42** S. 28(2)(f) modified (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), **ss. 63**, 138(2); S.I. 2003/708, art. 2(a)
- C43** S. 28(7) applied (prosp.) by 2001 c. 16, **ss. 57(1)(n)(2)(4)**, 138(2)
- C44** S. 28(7) applied (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), **ss. 57(1)(n)**, 138(2) (with s. 57(4)); S.I. 2003/708, art. 2(a)

## **[<sup>F87</sup>28A Power to enter domestic premises under a warrant**

- (1) [<sup>F88</sup>On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—]
- (a) there are reasonable grounds for suspecting that there are on any domestic premises documents—
    - (i) the production of which has been required under section 26; and
    - (ii) which have not been produced as required; or
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any domestic premises documents which the [<sup>F89</sup>CMA] has power under section 26 to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise a named officer of the [<sup>F89</sup>CMA], and any other of its officers whom the [<sup>F89</sup>CMA] has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;



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- (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, 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.
- (3) If, in the case of a warrant under subsection (1)(b), [<sup>F90</sup>the court or (as the case may be) the Tribunal] is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- [ An application for a warrant under this section must be made—
- <sup>F91</sup>(8A) (a) in the case of an application to the court, in accordance with rules of court;  
(b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- (9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—
- (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
  - (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.]

#### Textual Amendments

- F87** S. 28A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 14**
- F88** Words in s. 28A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F89** Word in s. 28A(1)(b)(i)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 9** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F90** Words in s. 28A(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F91** S. 28A(8A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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**Modifications etc. (not altering text)**

- C36** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; S.R. 2005/514, art. 2)

**29 Entry of premises under warrant: supplementary.**

- (1) A warrant issued under section 28 [<sup>F92</sup>or 28A] must indicate—
  - (a) the subject matter and purpose of the investigation;
  - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 [<sup>F93</sup>or 28A] are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he 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 him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
 

“named officer” means the officer named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

**Textual Amendments**

- F92** Words in s. 29(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 15(2)**
- F93** Words in s. 29(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 15(3)**

**Modifications etc. (not altering text)**

- C35** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)
- C36** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; S.R. 2005/514, art. 2)
- C45** S. 29 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

**30 Privileged communications.**

- (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—

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- (a) between a professional legal adviser and his client, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

- (3) In the application of this section to Scotland—
  - (a) references to the High Court are to be read as references to the Court of Session; and
  - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

**Modifications etc. (not altering text)**

- C35** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)
- C36** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; S.R. 2005/514, art. 2)
- C46** S. 30 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

[<sup>F94</sup>**30A Use of statements in prosecution**

[ A statement made by a person in response to a requirement imposed by virtue of <sup>F95</sup>(1) any of sections [<sup>F96</sup>26 and 27 to 28A] may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.]

[<sup>F97</sup>(2) A statement by an individual in response to a requirement imposed by virtue of section 26A (a “section 26A statement”) may only be used in evidence against the individual—

- (a) on a prosecution for an offence under section 44, or
- (b) on a prosecution for some other offence in a case falling within subsection (3).

(3) A prosecution falls within this subsection if, in the proceedings—

- (a) in giving evidence, the individual makes a statement inconsistent with the section 26A statement, and
- (b) evidence relating to the section 26A statement is adduced, or a question relating to it is asked, by or on behalf of the individual.

(4) A section 26A statement may not be used in evidence against an undertaking with which the individual who gave the statement has a connection on a prosecution for an offence unless the prosecution is for an offence under section 44.

(5) For the purposes of subsection (4), an individual has a connection with an undertaking if he or she is or was—

- (a) concerned in the management or control of the undertaking, or

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(b) employed by, or otherwise working for, the undertaking.]

#### Textual Amendments

- F94** S. 30A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 198, 279**; S.I. 2003/1397, art. 2(1), Sch.
- F95** S. 30A renumbered as s. 30A(1) (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 39(5), 103(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F96** Words in s. 30A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 39(6), 103(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F97** S. 30A(2)-(5) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 39(7), 103(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)

#### [<sup>F98</sup>31 Decisions following an investigation.

- (1) If as a result of an investigation the [<sup>F99</sup>CMA] proposes to make a decision, the [<sup>F99</sup>CMA] must—
- (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
  - (b) give that person (or those persons) an opportunity to make representations.]
- [<sup>F98</sup>(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the [<sup>F99</sup>CMA] —
- (a) that the Chapter I prohibition has been infringed;
  - (b) that the Chapter II prohibition has been infringed;
  - (c) that the prohibition in [<sup>F100</sup>Article 101(1)] has been infringed; or
  - (d) that the prohibition in [<sup>F101</sup>Article 102] has been infringed.]

#### Textual Amendments

- F98** S. 31 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 17**
- F99** Word in s. 31(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 10** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F100** Words in s. 31(2)(c) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F101** Words in s. 31(2)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

#### [<sup>F102</sup>31A Commitments

- (1) Subsection (2) applies in a case where the [<sup>F103</sup>CMA] has begun an investigation under section 25 but has not made a decision (within the meaning given by section 31(2)).
- (2) For the purposes of addressing the competition concerns it has identified, the [<sup>F103</sup>CMA] may accept from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.
- (3) At any time when commitments are in force the [<sup>F103</sup>CMA] may accept from the person (or persons) who gave the commitments—

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- (a) a variation of them if it is satisfied that the commitments as varied will address its current competition concerns;
  - (b) commitments in substitution for them if it is satisfied that the new commitments will address its current competition concerns.
- (4) Commitments under this section—
- (a) shall come into force when accepted; and
  - (b) may be released by the [F103CMA] where—
    - (i) it is requested to do so by the person (or persons) who gave the commitments; or
    - (ii) it has reasonable grounds for believing that the competition concerns referred to in subsection (2) or (3) no longer arise.
- (5) The provisions of Schedule 6A to this Act shall have effect with respect to procedural requirements for the acceptance, variation and release of commitments under this section.]

#### Textual Amendments

**F102** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 18](#)

**F103** Words in s. 31A(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 11](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [F102]31B Effect of commitments under section 31A

- (1) Subsection (2) applies if the [F104CMA] has accepted commitments under section 31A (and has not released them).
- (2) In such a case, the [F104CMA] shall not—
  - (a) continue the investigation,
  - (b) make a decision (within the meaning of section 31(2)), or
  - (c) give a direction under section 35,in relation to the agreement or conduct which was the subject of the investigation (but this subsection is subject to subsections (3) and (4)).
- (3) Nothing in subsection (2) prevents the [F104CMA] from taking any action in relation to competition concerns which are not addressed by commitments accepted by it.
- (4) Subsection (2) also does not prevent the [F104CMA] from continuing the investigation, making a decision, or giving a direction where—
  - (a) it has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted;
  - (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
  - (c) it has reasonable grounds for suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular.
- (5) If, pursuant to subsection (4), the [F104CMA] makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.]

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#### Textual Amendments

- F102** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 18](#)
- F104** Words in ss. 31B(1)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 12](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### [<sup>F102</sup>31C Review of commitments

- (1) Where the [<sup>F105</sup>CMA] is reviewing or has reviewed the effectiveness of commitments accepted under section 31A it must, if requested to do so by the Secretary of State, prepare a report of its findings.
- (2) The [<sup>F105</sup>CMA] must—
  - (a) give any report prepared by it under subsection (1) to the Secretary of State; and
  - (b) publish the report.]

#### Textual Amendments

- F102** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 18](#)
- F105** Word in s. 31C(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 13](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### [<sup>F102</sup>31D Guidance

- (1) The [<sup>F106</sup>CMA] must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.
- (2) The [<sup>F106</sup>CMA] may at any time alter the guidance.
- (3) If the guidance is altered, the [<sup>F106</sup>CMA] must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The [<sup>F107</sup>CMA] may, after consulting the Secretary of State, choose how it publishes its guidance.
- (6) If the [<sup>F107</sup>CMA] is preparing or altering guidance under this section it must consult such persons as it considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) When exercising its discretion to accept commitments under section 31A, the [<sup>F108</sup>CMA] must have regard to the guidance for the time being in force under this section.]



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#### Textual Amendments

- F102** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**
- F106** Word in s. 31D(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 14** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F107** Word in s. 31D(5)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 14** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F108** Word in s. 31D(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 14** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### [<sup>F102</sup>31E Enforcement of commitments

- (1) If a person from whom the [<sup>F109</sup>CMA] has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the [<sup>F109</sup>CMA] may apply to the court for an order—
- requiring the defaulter to make good his default within a time specified in the order; or
  - if the commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all the costs of, or incidental to, the application for the order to be borne by—
- the person in default; or
  - any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.]

#### Textual Amendments

- F102** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**
- F109** Word in s. 31E(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 15** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### [<sup>F110</sup>31F Power for Secretary of State to impose time-limits on investigations etc.

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

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### Textual Amendments

- F110** S. 31F inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 45, 103(1)(i)(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)

## Enforcement

### 32 Directions in relation to agreements.

- (1) If the [<sup>F111</sup>CMA] has made a decision that an agreement infringes the Chapter I prohibition [<sup>F112</sup>or that it infringes the prohibition in][<sup>F113</sup>Article 101(1)], [<sup>F114</sup>it] may give to such person or persons as [<sup>F114</sup>it] considers appropriate such directions as [<sup>F114</sup>it] considers appropriate to bring the infringement to an end.
- (2) [<sup>F115</sup>Subsection (1) applies whether the [<sup>F116</sup>OFT's] decision is made on [<sup>F116</sup>its] own initiative or on an application made to [<sup>F116</sup>it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the parties to the agreement to modify the agreement; or
  - (b) requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

### Textual Amendments

- F111** Word in s. 32(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 16** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F112** Words in s. 32(1) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 19(2)**
- F113** Words in s. 32(1) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F114** Words in s. 32(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(24)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F115** S. 32(2) ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 19(3)** (with reg. 6(2))
- F116** Words in s. 32(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(24)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### Modifications etc. (not altering text)

- C47** S. 32 modified by 1991 c. 56, s. 110B(5)(a) (as substituted (1.11.2016) by Water Act 2014 (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2018/397, art. 2(b))
- C48** S. 32 modified by 1991 c. 56, s. 110A(7)(a) (as substituted (1.11.2016) by Water Act 2014 (c. 21), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i); S.I. 2018/397, art. 2(b))
- C49** S. 32 modified by 1991 c. 56, s. 117E(7)(a) (as inserted (1.4.2017 for specified purposes) by Water Act 2014 (c. 21), s. 94(3), **Sch. 4**; S.I. 2017/462, art. 3(j))
- C50** S. 32 modified by 1991 c. 56, s. 66D(7)(a) (as substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 2 para. 3**; S.I. 2017/462, art. 3(i)(iii) (with arts. 6-9))
- C51** S. 32 modified by 1991 c. 56, s. 105ZA(9)(a) (as inserted (1.10.2017 for E., 1.4.2019 for W.) by Water Act 2014 (c. 21), **ss. 11(3), 94(3)**; S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d))

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- C52** S. 32 modified by 1991 c. 56, s. 51B(9)(a) (as substituted (1.10.2017 for E., 1.4.2019 for W.) by Water Act 2014 (c. 21), **ss. 10(3)**, 94(3); S.I. 2017/462, art. 4(a) (with art. 15); S.I. 2017/1288, art. 3(c))
- C53** S. 32 modified by 1991 c. 56, s. 51C(4)(a) (as substituted (1.10.2017 for E., 1.4.2019 for W.) by Water Act 2014 (c. 21), **ss. 10(3)**, 94(3); S.I. 2017/462, art. 4(a) (with art. 15); S.I. 2017/1288, art. 3(c))
- C54** S. 32 modified by 1991 c. 56, s. 105ZB(4)(a) (as inserted (1.10.2017 for E., 1.4.2019 for W.) by Water Act 2014 (c. 21), **ss. 11(3)**, 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d))
- C55** S. 32 modified by 1991 c. 56, s. 40(7)(a) (as substituted (1.4.2018 for E. for specified purposes, 1.4.2019 for W.) by Water Act 2014 (c. 21), **ss. 8(1)**, 94(3) (with s. 8(2)); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a))
- C56** S. 32 modified by 1991 c. 56, s. 40A(5)(a) (as substituted (1.4.2018 for E. for specified purposes, 1.4.2019 for W.) by Water Act 2014 (c. 21), **ss. 8(1)**, 94(3) (with s. 8(2)); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a))

### 33 Directions in relation to conduct.

- (1) If the [<sup>F117</sup>CMA] has made a decision that conduct infringes the Chapter II prohibition [<sup>F118</sup>or that it infringes the prohibition in][<sup>F119</sup>Article 102], [<sup>F120</sup>it] may give to such person or persons as [<sup>F120</sup>it] considers appropriate such directions as [<sup>F120</sup>it] considers appropriate to bring the infringement to an end.
- (2) [<sup>F121</sup>Subsection (1) applies whether the [<sup>F122</sup>OFT's] decision is made on [<sup>F122</sup>its] own initiative or on an application made to [<sup>F122</sup>it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the person concerned to modify the conduct in question; or
  - (b) requiring him to cease that conduct.
- (4) A direction under this section must be given in writing.

#### Textual Amendments

- F117** Word in s. 33(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 17** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F118** Words in s. 33(1) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 20(2)**
- F119** Words in s. 33(1) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F120** Words in s. 33(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(25)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F121** S. 33(2) ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 20(3)** (with reg. 6(2))
- F122** Words in s. 33(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(25)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### 34 Enforcement of directions.

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the [<sup>F123</sup>CMA] may apply to the court for an order—
  - (a) requiring the defaulter to make good his default within a time specified in the order; or

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- (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
- (a) the person in default; or
  - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

#### Textual Amendments

**F123** Word in s. 34(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 18](#) (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

### 35 Interim measures.

- [<sup>F124</sup>(1) Subject to subsections (8) and (9), this section applies if the [<sup>F125</sup>CMA] has begun an investigation under section 25 and not completed it (but only applies so long as the [<sup>F125</sup>CMA] has power under section 25 to conduct that investigation).]
- (2) If the [<sup>F125</sup>CMA] considers that it is necessary for [<sup>F126</sup>it] to act under this section as a matter of urgency for the purpose—
- (a) of preventing [<sup>F127</sup>significant damage] to a particular person or category of person, or
  - (b) of protecting the public interest,
- [<sup>F126</sup>it] may give such directions as [<sup>F126</sup>it] considers appropriate for that purpose.
- (3) Before giving a direction under this section, the [<sup>F125</sup>CMA] must—
- (a) give written notice to the person (or persons) to whom [<sup>F126</sup>it] proposes to give the direction; and
  - (b) give that person (or each of them) an opportunity to make representations.
- (4) A notice under subsection (3) must indicate the nature of the direction which the [<sup>F125</sup>CMA] is proposing to give and [<sup>F126</sup>its] reasons for wishing to give it.
- [<sup>F128</sup>(5) A direction given under this section may if the circumstances permit be replaced by—
- (a) a direction under section 32 or (as appropriate) section 33, or
  - (b) commitments accepted under section 31A,
- but, subject to that, has effect while this section applies.]
- (6) In the [<sup>F129</sup>cases mentioned in section 25(2), (3), (6) and (7)], sections 32(3) and 34 also apply to directions given under this section.
- (7) In the [<sup>F130</sup>cases mentioned in section 25(4) and (5)], sections 33(3) and 34 also apply to directions given under this section.
- [<sup>F131</sup>(8) In the case of an investigation conducted by virtue of section 25(2) or (6), this section does not apply if a person has produced evidence to the [<sup>F132</sup>CMA] in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion

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that the suspected agreement is exempt from the Chapter I prohibition as a result of section 9(1); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade within the United Kingdom, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.

(9) In the case of an investigation conducted by virtue of section 25(3) or (7), this section does not apply if a person has produced evidence to the [F132CMA] in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is an agreement to which the prohibition in [F133Article 101(1)] is inapplicable because the agreement satisfies the conditions in [F133Article 101(3)]; and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade between Member States, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within [F25the European Union].

#### Textual Amendments

- F25** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F124** S. 35(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 21(2)**
- F125** Words in s. 35(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 19** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F126** Words in s. 35 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(27)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F127** Words in s. 35(2)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 43, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F128** S. 35(5) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 21(3)**
- F129** Words in s. 35(6) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 21(4)**
- F130** Words in s. 35(7) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 21(5)**
- F131** S. 35(8)(9) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 21(6)**
- F132** Word in s. 35(8)(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 19** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F133** Words in s. 35(9) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

#### Modifications etc. (not altering text)

- C57** S. 35(2) modified by 1991 c. 56, s. 110A(7)(b)(8) (as substituted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i))
- C58** S. 35(2) modified by 1991 c. 56, s. 110B(5)(b) (as substituted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i))
- C59** S. 35(2) modified by 1991 c. 56, s. 117E(7)(b)(8) (as inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 4**; S.I. 2017/462, art. 3(j))



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- C60** S. 35(2) modified by 1991 c. 56, s. 66D(7)(b)(8) (as substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 3](#); S.I. 2017/462, art. 3(i)(iii) (with arts. 6-9))
- C61** S. 35(2) modified by 1991 c. 56, s. 105ZA(9)(b)(10) (as inserted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\)](#), 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d))
- C62** S. 35(2) modified by 1991 c. 56, s. 105ZB(4)(b)(5) (as inserted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\)](#), 94(3); S.I. 2017/462, art. 4(b); S.I. 2017/1288, art. 3(d))
- C63** S. 35(2) modified by 1991 c. 56, s. 51B(9)(b)(10) (as substituted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 10\(3\)](#), 94(3); S.I. 2017/462, art. 4(a) (with art. 15); S.I. 2017/1288, art. 3(c))
- C64** S. 35(2) modified by 1991 c. 56, s. 51C(4)(b)(5) (as substituted (1.10.2017 for E., 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 10\(3\)](#), 94(3); S.I. 2017/462, art. 4(a) (with art. 15); S.I. 2017/1288, art. 3(c))
- C65** S. 35(2) modified by 1991 c. 56, s. 40(7)(b)(8) (as substituted (1.4.2018 for E. for specified purposes, 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\)](#), 94(3) (with s. 8(2)); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a))
- C66** S. 35(2) modified by 1991 c. 56, s. 40A(5)(b)(6) (as substituted (1.4.2018 for E. for specified purposes, 1.4.2019 for W.) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\)](#), 94(3) (with s. 8(2)); S.I. 2017/1288, art. 3(a); S.I. 2018/397, art. 2(a))

### 36 [F134Penalties].

- (1) On making a decision that an agreement has infringed the Chapter I prohibition [F135] or that it has infringed the prohibition in [F136] Article 101(1)], the [F137]CMA] may require an undertaking which is a party to the agreement to pay the [F137]CMA] a penalty in respect of the infringement.
  - (2) On making a decision that conduct has infringed the Chapter II prohibition [F138] or that it has infringed the prohibition in [F139] Article 102], the [F137]CMA] may require the undertaking concerned to pay the [F137]CMA] a penalty in respect of the infringement.
  - (3) The [F137]CMA] may impose a penalty on an undertaking under subsection (1) or (2) only if [F140]the [F137]CMA]] is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
  - (4) Subsection (1) is subject to section 39 and does not apply [F141]in relation to a decision that an agreement has infringed the Chapter I prohibition] if the [F137]CMA] is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.
  - (5) Subsection (2) is subject to section 40 and does not apply [F142]in relation to a decision that conduct has infringed the Chapter II prohibition] if the [F137]CMA] is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.
  - (6) Notice of a penalty under this section must—
    - (a) be in writing; and
    - (b) specify the date before which the penalty is required to be paid.
  - (7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.
- [F143](7A) In fixing a penalty under this section the CMA must have regard to—
- (a) the seriousness of the infringement concerned, and
  - (b) the desirability of deterring both the undertaking on whom the penalty is imposed and others from—



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- (i) entering into agreements which infringe the Chapter 1 prohibition or the prohibition in Article 81(1), or
  - (ii) engaging in conduct which infringes the Chapter 2 prohibition or the prohibition in Article 82.]
- (8) No penalty fixed by the [F144CMA] under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).
- (9) Any sums received by the [F144CMA] under this section are to be paid into the Consolidated Fund.

#### Textual Amendments

- F134** Word in s. 36 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 22(6)**
- F135** Words in s. 36(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 22(2)**
- F136** Words in s. 36(1) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F137** Word in s. 36(1)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 20** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F138** Words in s. 36(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 22(3)**
- F139** Words in s. 36(2) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F140** Words in s. 36(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(28)** (c); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F141** Words in s. 36(4) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 22(4)**
- F142** Words in s. 36(5) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 22(5)**
- F143** S. 36(7A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 44(2), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F144** Word in s. 36(8)(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 20** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 37 Recovery of penalties.

- (1) If the specified date in a penalty notice has passed and—
- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
  - (b) such an appeal has been made and determined,
- the [F145CMA] may recover from the undertaking, as a civil debt due to the [F145CMA], any amount payable under the penalty notice which remains outstanding.
- (2) In this section—
- “penalty notice” means a notice given under section 36; and
  - “specified date” means the date specified in the penalty notice.

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### Textual Amendments

**F145** Word in s. 37(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 21](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 38 The appropriate level of a penalty.

- (1) The [<sup>F146</sup>CMA] must prepare and publish guidance as to the appropriate amount of any penalty under this Part [<sup>F147</sup> in respect of an infringement of the Chapter 1 prohibition, the Chapter 2 prohibition, the prohibition in Article 81(1) or the prohibition in Article 82] .
- [<sup>F148</sup>(1A) The guidance must include provision about the circumstances in which, in determining [<sup>F149</sup>such a penalty] , the [<sup>F146</sup>CMA] may take into account effects in another Member State of the agreement or conduct concerned.]
  - (2) The [<sup>F146</sup>CMA] may at any time alter the guidance.
  - (3) If the guidance is altered, the [<sup>F146</sup>CMA] must publish it as altered.
  - (4) No guidance is to be published under this section without the approval of the Secretary of State.
  - (5) The [<sup>F150</sup>CMA] may, after consulting the Secretary of State, choose how [<sup>F151</sup>it] publishes [<sup>F151</sup>its] guidance.
  - (6) If the [<sup>F150</sup>CMA] is preparing or altering guidance under this section [<sup>F151</sup>it] must consult such persons as [<sup>F151</sup>it] considers appropriate.
  - (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
  - (8) When setting the amount of a penalty under this Part [<sup>F152</sup> in respect of an infringement of a kind mentioned in subsection (1)] , the [<sup>F153</sup>CMA][<sup>F154</sup>and the Tribunal ] must have regard to the guidance for the time being in force under this section.
  - (9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the [<sup>F153</sup>CMA] , [<sup>F155</sup>the Tribunal] or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.
  - (10) In subsection (9) “the appropriate court” means—
    - (a) in relation to England and Wales, the Court of Appeal;
    - (b) in relation to Scotland, the Court of Session;
    - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
    - [<sup>F156</sup>(d) the Supreme Court.]

### Textual Amendments

**F146** Word in s. 38(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 22](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F147** Words in s. 38(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(4\)](#), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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- F148** S. 38(1A) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 23(2)**
- F149** Words in s. 38(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 40(5), 103(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F150** Word in s. 38(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 22** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F151** Words in s. 38 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(30)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F152** Words in s. 38(8) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 40(6), 103(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F153** Word in s. 38(8)(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 22** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F154** Words in s. 38(8) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 44(3), 103(3)**; S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F155** Words in s. 38(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 10**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F156** S. 38(10)(d) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 9 para. 65(2)**; S.I. 2009/1604, art. 2(d)

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#### Commencement Information

- I5** S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 76(3); s. 38(1)–(7) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; s. 38(8)–(10) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

### 39 [F157 Limited immunity in relation to the Chapter I prohibition].

- (1) In this section “small agreement” means an agreement—
  - (a) which falls within a category prescribed for the purposes of this section; but
  - (b) is not a price fixing agreement.
- (2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—
  - (a) the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the agreement (determined in that way).
- (3) A party to a small agreement is immune from the effect of section 36(1) [F158 so far as that provision relates to decisions about infringement of the Chapter I prohibition]; but the [F159 CMA] may withdraw that immunity under subsection (4).
- (4) If the [F159 CMA] has investigated a small agreement, [F160 it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [F160 its] investigation, [F160 it] considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The [F159 CMA] must give each of the parties in respect of which immunity is withdrawn written notice of [F160 its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.

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- (8) In determining the withdrawal date, the [F161CMA] must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.
- (9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

#### Textual Amendments

- F157** Words in s. 39 sidenote substituted (1.5.2004) by *The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261)*, reg. 1(a), **Sch. 1 para. 24(3)**
- F158** Words in s. 39(3) inserted (1.5.2004) by *The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261)*, reg. 1(a), **Sch. 1 para. 24(2)**
- F159** Word in s. 39(3)-(5) substituted (1.4.2014) by *Enterprise and Regulatory Reform Act 2013 (c. 24)*, s. 103(3), **Sch. 5 para. 23** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F160** Words in s. 39 substituted (1.4.2003) by *Enterprise Act 2002 (c. 40)*, s. 279, **Sch. 25 para. 38(31)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F161** Word in s. 39(8) substituted (1.4.2014) by *Enterprise and Regulatory Reform Act 2013 (c. 24)*, s. 103(3), **Sch. 5 para. 23** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 40 Limited immunity in relation to the Chapter II prohibition.

- (1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.
- (2) The criteria by reference to which a category is prescribed may, in particular, include—
  - (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the conduct (determined in that way).
- (3) A person is immune from the effect of section 36(2)[F162], so far as that provision relates to decisions about infringement of the Chapter II prohibition,] if [F163:its] conduct is conduct of minor significance; but the [F164CMA] may withdraw that immunity under subsection (4).
- (4) If the [F164CMA] has investigated conduct of minor significance, [F165:it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [F165:its] investigation, [F165:it] considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The [F164CMA] must give the person, or persons, whose immunity has been withdrawn written notice of [F163:its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.

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- (8) In determining the withdrawal date, the [F166CMA] must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

#### Textual Amendments

- F162** Words in s. 40(3) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 25(2)**
- F163** Word in s. 40(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(c)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F164** Word in s. 40(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 24** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)
- F165** Words in s. 40(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F166** Word in s. 40(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 24** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### [F167] Civil sanctions

#### Textual Amendments

- F167** Ss. 40A, 40B and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 40(2)**, 103(1)(i)(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

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

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 26, 26A, 27, 28 or 28A, it may impose a penalty of such amount as it considers appropriate.
- (2) The amount may 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 imposed under subsection (1) must not—
- in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
  - in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify;
  - in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (4) The fixed amount specified for the purposes of subsection (3)(a) or (c) may not exceed £30,000.

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

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

- (1) The CMA must prepare and publish a statement of policy in relation to the use of its powers under section 40A.
- (2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 40A.
- (3) The CMA may revise its statement of policy and, where it does so, it must publish the revised statement.
- (4) The CMA must consult such persons as it considers appropriate when preparing or revising its statement of policy.
- (5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (6) In deciding whether and, if so, how to proceed under section 40A, the CMA must have regard to the statement of policy which was most recently published under this section at the time when the failure concerned occurred.]

#### **41 Agreements notified to the Commission.**

- [<sup>F168</sup>(1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.



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- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the [F169OFT] from investigating it under this Part.
- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.]

#### Textual Amendments

- F168** S. 41 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 26** (with reg. 6(2))
- F169** Word in s. 41 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(33)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### Offences

#### 42 Offences.

- F170(1) .....
- F170(2) .....
- F170(3) .....
- F170(4) .....

- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.
- (6) A person guilty of an offence under subsection F171 ... (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under [F172section 28 or 28A] is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Textual Amendments

- F170** S. 42(1)-(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 40(8), 103(3)**; [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)
- F171** Words in s. 42(6) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 40(9), 103(3)**; [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

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**F172** Words in s. 42(7) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 27(3)**

#### 43 Destroying or falsifying documents.

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27<sup>[F173]</sup>, 28 or 28A]—
- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
  - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

##### Textual Amendments

**F173** Words in s. 43(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 28(2)**

#### 44 False or misleading information.

- (1) If information is provided by a person to the <sup>[F174]</sup>CMA] in connection with any function of the <sup>[F174]</sup>CMA] under this Part, that person is guilty of an offence if—
- (a) the information is false or misleading in a material particular, and
  - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
  - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the <sup>[F174]</sup>CMA] in connection with any of <sup>[F175]</sup>its] functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

##### Textual Amendments

**F174** Word in s. 44(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 25** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F175** Words in s. 44 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(34)**; S.I. 2003/766, art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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#### Modifications etc. (not altering text)

C67 S. 44 applied (18.6.2001) by 2000 c. 8, s. 399; S.I. 2001/1820, art. 2, Sch.

## CHAPTER IV

### [<sup>F176</sup> APPEALS BEFORE THE TRIBUNAL AND PROCEEDINGS AND SETTLEMENTS RELATING TO INFRINGEMENTS OF COMPETITION LAW]

#### Textual Amendments

F176 Pt. 1 Ch. 4 heading substituted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017](#) (S.I. 2017/385), reg. 1(2), [Sch. 1 para. 2](#) (with Sch. 1 para. 5)

F177 ...

#### Textual Amendments

F177 S. 45 cross-heading omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013](#) (c. 24), s. 103(3), [Sch. 5 para. 220](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### <sup>F178</sup> 45 The Competition Commission.

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#### Textual Amendments

F178 S. 45 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013](#) (c. 24), s. 103(3), [Sch. 5 para. 220](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### Modifications etc. (not altering text)

C68 S. 45(4) savings for effect of 2013 c. 24, Sch. 5 para. 220 (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014](#) (S.I. 2014/892), arts. 1(1), [3\(7\)](#) (with art. 3)

### [<sup>F179</sup> Appeals before the Tribunal]

#### Textual Amendments

F179 S. 46 cross-heading substituted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017](#) (S.I. 2017/385), reg. 1(2), [Sch. 2 para. 2](#)

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

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## 46 Appealable decisions.

- (1) Any party to an agreement in respect of which the [F180CMA] has made a decision may appeal to [F181the Tribunal] against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the [F180CMA] has made a decision may appeal to [F181the Tribunal] against, or with respect to, the decision.
- [F182](3) In this section “decision” means a decision of the [F180CMA] —
  - (a) as to whether the Chapter I prohibition has been infringed,
  - (b) as to whether the prohibition in [F183Article 101(1)] has been infringed,
  - (c) as to whether the Chapter II prohibition has been infringed,
  - (d) as to whether the prohibition in [F184Article 102] has been infringed,
  - (e) cancelling a block or parallel exemption,
  - (f) withdrawing the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation,
  - (g) not releasing commitments pursuant to a request made under section 31A(4)(b)(i),
  - (h) releasing commitments under section 31A(4)(b)(ii),
  - (i) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,
 and includes a direction under section 32, 33 or 35 and such other decisions under this Part as may be prescribed.]
- (4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.
- (5) Part I of Schedule 8 makes further provision about appeals.

### Textual Amendments

- F180** Word in s. 46(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 26](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F181** Words in s. 46(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 2\(a\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F182** S. 46(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 29\(2\)](#) (with reg. 8)
- F183** Words in s. 46(3)(b) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), [Sch. Pt. 1](#) (with art. 2(2))
- F184** Words in s. 46(3)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), [Sch. Pt. 1](#) (with art. 2(2))

### Modifications etc. (not altering text)

- C69** Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, [rule 3](#)  
Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, [rule 6](#)

## [F185] 47 Third party appeals

- [F186](1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to—

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- (a) a decision falling within paragraphs (a) to (f) of section 46(3);
  - (b) a decision falling within paragraph (g) of section 46(3);
  - (c) a decision of the [<sup>F187</sup>CMA] to accept or release commitments under section 31A, or to accept a variation of such commitments other than a variation which is not material in any respect;
  - (d) a decision of the [<sup>F187</sup>CMA] to make directions under section 35;
  - (e) a decision of the [<sup>F187</sup>CMA] not to make directions under section 35; or
  - (f) such other decision of the [<sup>F187</sup>CMA] under this Part as may be prescribed.]
- (2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.
- (3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.]

#### Textual Amendments

**F185** S. 47 substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 17, 279; S.I. 2003/1397, art. 2(1), Sch. (with art. 5)

**F186** S. 47(1) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 30(2) (with reg. 8)

**F187** Word in s. 47(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 27 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### Modifications etc. (not altering text)

**C70** Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, rule. 3

Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, rule 6

#### *[<sup>F188</sup>Claims for loss or damage: proceedings before the Tribunal]*

#### Textual Amendments

**F188** S. 47A cross-heading inserted (9.3.2017) by The Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017 (S.I. 2017/385), reg. 1(2), Sch. 2 para. 3

#### **[<sup>F189</sup>47A] Proceedings before the Tribunal: claims for damages etc.**

- (1) A person may make a claim to which this section applies in proceedings before the Tribunal, subject to the provisions of this Act and Tribunal rules.
- (2) This section applies to a claim of a kind specified in subsection (3) which a person who has suffered loss or damage may make in civil proceedings brought in any part of the United Kingdom in respect of an infringement decision or an alleged infringement of—
  - (a) the Chapter I prohibition,
  - (b) the Chapter II prohibition,
  - (c) the prohibition in Article 101(1), or
  - (d) the prohibition in Article 102.

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- (3) The claims are—
- (a) a claim for damages;
  - (b) any other claim for a sum of money;
  - (c) in proceedings in England and Wales or Northern Ireland, a claim for an injunction.
- (4) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules or rules relating to prescription that would apply in such proceedings are to be disregarded.
- (5) The right to make a claim in proceedings under this section does not affect the right to bring any other proceedings in respect of the claim.
- (6) In this Part (except in section 49C) “infringement decision” means—
- (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed,
  - (b) a decision of the Tribunal on an appeal from a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
  - (c) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed.]

#### Textual Amendments

**F189** S. 47A substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 4\(1\)](#) (with [Sch. 8 para. 4\(2\)](#) and [The Competition Appeal Tribunal Rules 2015 \(S.I. 2015/1648\)](#), rules 1, 119(4)); [S.I. 2015/1630](#), art. 3(j)

#### [<sup>F190</sup>47B] Collective proceedings before the Tribunal

- (1) Subject to the provisions of this Act and Tribunal rules, proceedings may be brought before the Tribunal combining two or more claims to which section 47A applies (“collective proceedings”).
- (2) Collective proceedings must be commenced by a person who proposes to be the representative in those proceedings.
- (3) The following points apply in relation to claims in collective proceedings—
  - (a) it is not a requirement that all of the claims should be against all of the defendants to the proceedings,
  - (b) the proceedings may combine claims which have been made in proceedings under section 47A and claims which have not, and
  - (c) a claim which has been made in proceedings under section 47A may be continued in collective proceedings only with the consent of the person who made that claim.
- (4) Collective proceedings may be continued only if the Tribunal makes a collective proceedings order.
- (5) The Tribunal may make a collective proceedings order only—



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- (a) if it considers that the person who brought the proceedings is a person who, if the order were made, the Tribunal could authorise to act as the representative in those proceedings in accordance with subsection (8), and
  - (b) in respect of claims which are eligible for inclusion in collective proceedings.
- (6) Claims are eligible for inclusion in collective proceedings only if the Tribunal considers that they raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings.
- (7) A collective proceedings order must include the following matters—
  - (a) authorisation of the person who brought the proceedings to act as the representative in those proceedings,
  - (b) description of a class of persons whose claims are eligible for inclusion in the proceedings, and
  - (c) specification of the proceedings as opt-in collective proceedings or opt-out collective proceedings (see subsections (10) and (11)).
- (8) The Tribunal may authorise a person to act as the representative in collective proceedings—
  - (a) whether or not that person is a person falling within the class of persons described in the collective proceedings order for those proceedings (a “class member”), but
  - (b) only if the Tribunal considers that it is just and reasonable for that person to act as a representative in those proceedings.
- (9) The Tribunal may vary or revoke a collective proceedings order at any time.
- (10) “Opt-in collective proceedings” are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.
- (11) “Opt-out collective proceedings” are collective proceedings which are brought on behalf of each class member except—
  - (a) any class member who opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective proceedings, and
  - (b) any class member who—
    - (i) is not domiciled in the United Kingdom at a time specified, and
    - (ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings.
- (12) Where the Tribunal gives a judgment or makes an order in collective proceedings, the judgment or order is binding on all represented persons, except as otherwise specified.
- (13) The right to make a claim in collective proceedings does not affect the right to bring any other proceedings in respect of the claim.
- (14) In this section and in section 47C, “specified” means specified in a direction made by the Tribunal.

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### Textual Amendments

**F190** S. 47B substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 5(1)** (with [Sch. 8 para. 5\(2\)](#)); [S.I. 2015/1630](#), art. 3(j)

## [<sup>F191</sup>47C Collective proceedings: damages and costs

<sup>F192</sup>(1) . . . . .

- (2) The Tribunal may make an award of damages in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person.
- (3) Where the Tribunal makes an award of damages in opt-out collective proceedings, the Tribunal must make an order providing for the damages to be paid on behalf of the represented persons to—
  - (a) the representative, or
  - (b) such person other than a represented person as the Tribunal thinks fit.
- (4) Where the Tribunal makes an award of damages in opt-in collective proceedings, the Tribunal may make an order as described in subsection (3).
- (5) Subject to subsection (6), where the Tribunal makes an award of damages in opt-out collective proceedings, any damages not claimed by the represented persons within a specified period must be paid to the charity for the time being prescribed by order made by the Lord Chancellor under section 194(8) of the Legal Services Act 2007.
- (6) In a case within subsection (5) the Tribunal may order that all or part of any damages not claimed by the represented persons within a specified period is instead to be paid to the representative in respect of all or part of the costs or expenses incurred by the representative in connection with the proceedings.
- (7) The Secretary of State may by order amend subsection (5) so as to substitute a different charity for the one for the time being specified in that subsection.
- (8) A damages-based agreement is unenforceable if it relates to opt-out collective proceedings.
- (9) In this section—
  - (a) “charity” means a body, or the trustees of a trust, established for charitable purposes only;
  - (b) “damages” (except in the term “exemplary damages”) includes any sum of money which may be awarded by the Tribunal in collective proceedings (other than costs or expenses);
  - (c) “damages-based agreement” has the meaning given in section 58AA(3) of the Courts and Legal Services Act 1990.]

### Textual Amendments

**F191** S. 47C inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 6**; [S.I. 2015/1630](#), art. 3(j)

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**F192** S. 47C(1) omitted (9.3.2017) by virtue of [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\)](#), reg. 1(2), **Sch. 2 para. 4(1)** (with Sch. 2 paras. 4(2), 10)

**[<sup>F193</sup>47D Proceedings under section 47A or collective proceedings: injunctions etc.**

- (1) An injunction granted by the Tribunal in proceedings under section 47A or in collective proceedings—
  - (a) has the same effect as an injunction granted by the High Court, and
  - (b) is enforceable as if it were an injunction granted by the High Court.
- (2) In deciding whether to grant an injunction in proceedings under section 47A or in collective proceedings, the Tribunal must—
  - (a) in proceedings in England and Wales, apply the principles which the High Court would apply in deciding whether to grant an injunction under section 37(1) of the Senior Courts Act 1981, and
  - (b) in proceedings in Northern Ireland, apply the principles that the High Court would apply in deciding whether to grant an injunction.
- (3) Subsection (2) is subject to Tribunal rules which make provision of the kind mentioned in paragraph 15A(3) of Schedule 4 to the Enterprise Act 2002 (undertakings as to damages in relation to claims subject to the fast-track procedure).]

**Textual Amendments**

**F190** S. 47B substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 5(1)** (with Sch. 8 para. 5(2)); S.I. 2015/1630, art. 3(j)

**F193** S. 47D inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 7**; S.I. 2015/1630, art. 3(j)

**[<sup>F194</sup>47E Limitation or prescriptive periods for proceedings under section 47A and collective proceedings**

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**Textual Amendments**

**F194** S. 47E omitted (9.3.2017) by virtue of [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\)](#), reg. 1(2), **Sch. 2 para. 5(1)** (with Sch. 2 paras. 5(2), 10)

*[<sup>F195</sup>Further provision about claims in respect of loss or damage before a court or the Tribunal*

**Textual Amendments**

**F195** S. 47F and cross-heading inserted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\)](#), reg. 1(2), **Sch. 1 para. 3** (with Sch. 1 para. 5)

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#### **47F Further provision about claims in respect of loss or damage before a court or the Tribunal**

Schedule 8A makes further provision about claims in respect of loss or damage before a court or the Tribunal.]

#### *[<sup>F196</sup>Further appeals from the Tribunal]*

##### **Textual Amendments**

**F196** S. 48 cross-heading inserted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\)](#), reg. 1(2), **Sch. 2 para. 6**

#### <sup>F197</sup>**48 Appeal tribunals.**

##### **Textual Amendments**

**F197** S. 48 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 3, **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### <sup>F198</sup>**49 Further appeals [<sup>F199</sup>from the Tribunal]**

- (1) An appeal lies to the appropriate court—
- (a) from a decision of the Tribunal as to the amount of a penalty under section 36; [<sup>F200</sup>and]
  - <sup>F201</sup>(b) .....
  - (c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.

<sup>F202</sup>(1A) An appeal lies to the appropriate court on a point of law arising from a decision of the Tribunal in proceedings under section 47A or in collective proceedings—

- (a) as to the award of damages or other sum (other than a decision on costs or expenses), or
- (b) as to the grant of an injunction.

(1B) An appeal lies to the appropriate court from a decision of the Tribunal in proceedings under section 47A or in collective proceedings as to the amount of an award of damages or other sum (other than the amount of costs or expenses).

(1C) An appeal under subsection (1A) arising from a decision in respect of a stand-alone claim may include consideration of a point of law arising from a finding of the Tribunal as to an infringement of a prohibition listed in section 47A(2).

(1D) In subsection (1C) “a stand-alone claim” is a claim—

- (a) in respect of an alleged infringement of a prohibition listed in section 47A(2), and
- (b) made in proceedings under section 47A or included in collective proceedings.]

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- (2) An appeal under this section—
- (a) [<sup>F203</sup>except as provided by subsection (2A),] may be brought by a party to the proceedings before the Tribunal or by a person who has a sufficient interest in the matter; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- [<sup>F204</sup>(2A) An appeal from a decision of the Tribunal in respect of a claim included in collective proceedings may be brought only by the representative in those proceedings or by a defendant to that claim.]
- (3) In this section “the appropriate court” means the Court of Appeal or, in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session.]

#### Textual Amendments

- F198** S. 49 substituted (1.4.2003 for specified purposes, 18.7.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 4](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#)); [S.I. 2004/1866, art. 2](#)
- F199** Words in s. 49 heading inserted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\), reg. 1\(2\), Sch. 2 para. 7](#)
- F200** Word in s. 49(1)(a) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 9\(2\)\(a\)](#); [S.I. 2015/1630, art. 3\(j\)](#)
- F201** S. 49(1)(b) omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 9\(2\)\(b\)](#); [S.I. 2015/1630, art. 3\(j\)](#)
- F202** S. 49(1A)-(1D) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 9\(3\)](#); [S.I. 2015/1630, art. 3\(j\)](#)
- F203** Words in s. 49(2)(a) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 9\(4\)](#); [S.I. 2015/1630, art. 3\(j\)](#)
- F204** S. 49(2A) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 9\(5\)](#); [S.I. 2015/1630, art. 3\(j\)](#)

#### Commencement Information

- I6** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 76(3); s. 49(3) in force at 1.4.1999 by [S.I. 1999/505, art. 2 Sch. 2](#); s. 49(1)(2) and (4) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

### <sup>F205</sup>Settlements relating to infringements of competition law

#### Textual Amendments

- F205** S. 49A and cross-heading inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 10\(1\)](#) (with [Sch. 8 para. 10\(2\)](#)); [S.I. 2015/1630, art. 3\(j\)](#)

#### 49A Collective settlements: where a collective proceedings order has been made

- (1) The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims in collective proceedings (a “collective settlement”) where—
- (a) a collective proceedings order has been made in respect of the claims, and

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- (b) the Tribunal has specified that the proceedings are opt-out collective proceedings.
- (2) An application for approval of a proposed collective settlement must be made to the Tribunal by the representative and the defendant in the collective proceedings.
  - (3) The representative and the defendant must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
  - (4) Where there is more than one defendant in the collective proceedings, “defendant” in subsections (2) and (3) means such of the defendants as wish to be bound by the proposed collective settlement.
  - (5) The Tribunal may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
  - (6) On the date on which the Tribunal approves a collective settlement—
    - (a) if the period within which persons may opt out of or (in the case of persons not domiciled in the United Kingdom) opt in to the collective proceedings has expired, subsections (8) and (10) apply so as to determine the persons bound by the settlement;
    - (b) if that period has not yet expired, subsections (9) and (10) apply so as to determine the persons bound by the settlement.
  - (7) If the period within which persons may opt out of the collective proceedings expires on a different date from the period within which persons not domiciled in the United Kingdom may opt in to the collective proceedings, the references in subsection (6) to the expiry of a period are to the expiry of whichever of those periods expires later.
  - (8) Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order who—
    - (a) were domiciled in the United Kingdom at the time specified for the purposes of determining domicile in relation to the collective proceedings (see section 47B(11)(b)(i)) and did not opt out of those proceedings, or
    - (b) opted in to the collective proceedings.
  - (9) Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order.
  - (10) But a collective settlement is not binding on a person who—
    - (a) opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
    - (b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective settlement.
  - (11) This section does not affect a person's right to offer to settle opt-in collective proceedings.
  - (12) In this section and in section 49B, “specified” means specified in a direction made by the Tribunal.]



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## **[<sup>F206</sup>49B] Collective settlements: where a collective proceedings order has not been made**

- (1) The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims (a “collective settlement”) where—
  - (a) a collective proceedings order has not been made in respect of the claims, but
  - (b) if collective proceedings were brought, the claims could be made at the commencement of the proceedings (disregarding any limitation or prescriptive period applicable to a claim in collective proceedings).
- (2) An application for approval of a proposed collective settlement must be made to the Tribunal by—
  - (a) a person who proposes to be the settlement representative in relation to the collective settlement, and
  - (b) the person who, if collective proceedings were brought in respect of the claims, would be a defendant in those proceedings (or, where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).
- (3) The persons applying to the Tribunal under subsection (2) must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
- (4) The Tribunal may make an order approving a proposed collective settlement (see subsection (8)) only if it first makes a collective settlement order.
- (5) The Tribunal may make a collective settlement order only—
  - (a) if it considers that the person described in subsection (2)(a) is a person who, if the order were made, the Tribunal could authorise to act as the settlement representative in relation to the collective settlement in accordance with subsection (7), and
  - (b) in respect of claims which, if collective proceedings were brought, would be eligible for inclusion in the proceedings (see section 47B(6)).
- (6) A collective settlement order must include the following matters—
  - (a) authorisation of the person described in subsection (2)(a) to act as the settlement representative in relation to the collective settlement, and
  - (b) description of a class of persons whose claims fall within subsection (5)(b).
- (7) The Tribunal may authorise a person to act as the settlement representative in relation to a collective settlement—
  - (a) whether or not that person is a person falling within the class of persons described in the collective settlement order for that settlement, but
  - (b) only if the Tribunal considers that it is just and reasonable for that person to act as the settlement representative in relation to that settlement.
- (8) Where the Tribunal has made a collective settlement order, it may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
- (9) A collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective settlement order.
- (10) But a collective settlement is not binding on a person who—

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- (a) opts out by notifying the settlement representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
- (b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the settlement representative that the claim should be included in the collective settlement.

(11) In this section, “settlement representative” means a person who is authorised by a collective settlement order to act in relation to a collective settlement.]

#### Textual Amendments

**F206** S. 49B inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 11(1)** (with [Sch. 8 para. 11\(2\)](#)); [S.I. 2015/1630](#), art. 3(j)

### [<sup>F207</sup> 49CA] Approval of redress schemes by the CMA

- (1) A person may apply to the CMA for approval of a redress scheme.
- (2) The CMA may consider an application before the infringement decision to which the redress scheme relates has been made, but may approve the scheme only—
  - (a) after that decision has been made, or
  - (b) in the case of a decision of the CMA, at the same time as that decision is made.
- (3) In deciding whether to approve a redress scheme, the CMA may take into account the amount or value of compensation offered under the scheme.
- (4) The CMA may approve a redress scheme under subsection (2)(b) subject to a condition or conditions requiring the provision of further information about the operation of the scheme (including about the amount or value of compensation to be offered under the scheme or how this will be determined).
- (5) If the CMA approves a redress scheme subject to such a condition, it may—
  - (a) approve the scheme subject to other conditions;
  - (b) withdraw approval from the scheme if any conditions imposed under subsection (4) or paragraph (a) are not met;
  - (c) approve a redress scheme as a replacement for the original scheme (but may not approve that scheme subject to conditions).
- (6) An approved scheme may not be varied by the CMA or the compensating party.
- (7) But, where the CMA approves a redress scheme subject to a condition of the kind mentioned in subsection (4), subsection (6) does not prevent further information provided in accordance with the condition from forming part of the terms of the scheme.
- (8) The Secretary of State may make regulations relating to the approval of redress schemes, and the regulations may in particular—
  - (a) make provision as to the procedure governing an application for approval of a redress scheme, including the information to be provided with the application;
  - (b) provide that the CMA may approve a redress scheme only if it has been devised according to a process specified in the regulations;
  - (c) provide that the CMA may approve a redress scheme only if it is in a form, or contains terms, specified in the regulations (which may include terms

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- requiring a settlement agreement under the scheme to be in a form, or contain terms, specified in the regulations);
- (d) provide that the CMA may approve a redress scheme only if (so far as the CMA can judge from facts known to it) the scheme is intended to be administered in a manner specified in the regulations;
- (e) describe factors which the CMA may or must take into account, or may not take into account, in deciding whether to approve a redress scheme.
- (9) The CMA must publish guidance with regard to—
- applications for approval of redress schemes,
  - the approval of redress schemes, and
  - the enforcement of approved schemes, and in particular as to the criteria which the CMA intends to adopt in deciding whether to bring proceedings under section 49E(4).
- (10) Guidance under subsection (9) must be approved by the Secretary of State before it is published.
- (11) In this section and sections 49D and 49E—
- “approved scheme” means a redress scheme approved by the CMA,
- “compensating party” means a person offering compensation under an approved scheme,
- “infringement decision” means—
- a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
  - a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, and
- “redress scheme” means a scheme under which a person offers compensation in consequence of an infringement decision made in respect of that person.
- (12) For the purposes of this section and section 49E, “compensation”—
- may be monetary or non-monetary, and
  - may be offered to persons who have not suffered a loss as a result of the infringement decision to which the redress scheme relates.

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#### Textual Amendments

**F207** Ss. 49C-49E inserted (3.8.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 12**; S.I. 2015/1584, art. 3(a); S.I. 2015/1630, art. 3(j)

#### 49D Redress schemes: recovery of costs

- The CMA may require a person making an application for approval of a redress scheme to pay some or all of the CMA's reasonable costs relating to the application.
- A requirement to pay costs is imposed by giving that person written notice specifying—
  - the amount to be paid,

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- (b) how that amount has been calculated, and
  - (c) by when that amount must be paid.
- (3) A person required to pay costs under this section may appeal to the Tribunal against the amount.
- (4) Where costs required to be paid under this section relate to an approved scheme, the CMA may withdraw approval from that scheme if the costs have not been paid by the date specified in accordance with subsection (2)(c).
- (5) Costs required to be paid under this section are recoverable by the CMA as a debt.

#### Textual Amendments

**F207** Ss. 49C-49E inserted (3.8.2015 for specified purposes, 1.10.2015 in so far as not already in force) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 12](#); S.I. 2015/1584, art. 3(a); S.I. 2015/1630, art. 3(j)

#### 49E Enforcement of approved schemes

- (1) A compensating party is under a duty to comply with the terms of an approved scheme (“the duty”).
- (2) The duty is owed to any person entitled to compensation under the terms of the approved scheme.
- (3) Where such a person suffers loss or damage as a result of a breach of the duty, the person may bring civil proceedings before the court for damages, an injunction or interdict or any other appropriate relief or remedy.
- (4) Where the CMA considers that the compensating party is in breach of the duty, the CMA may bring civil proceedings before the court for an injunction or interdict or any other appropriate relief or remedy.
- (5) Subsection (4) is without prejudice to any right that a person has to bring proceedings under subsection (3).
- (6) In any proceedings brought under subsection (3) or (4), it is a defence for the compensating party to show that it took all reasonable steps to comply with the duty.
- (7) Where the CMA considers that it is no longer appropriate for the compensating party to be subject to the duty, the CMA may give notice in writing to that party stating that it is released from the duty.
- (8) Where a person has entered into a settlement agreement with the compensating party, that agreement remains enforceable notwithstanding the release of the compensating party under subsection (7) from the duty.
- (9) In this section “the court” means—
- (a) in England and Wales, the High Court or the county court,
  - (b) in Northern Ireland, the High Court or a county court,
  - (c) in Scotland, the Court of Session or the sheriff.]]

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#### Textual Amendments

**F207** Ss. 49C-49E inserted (3.8.2015 for specified purposes, 1.10.2015 in so far as not already in force) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 12**; S.I. 2015/1584, art. 3(a); S.I. 2015/1630, art. 3(j)

## CHAPTER V

### MISCELLANEOUS

#### *Vertical agreements and land agreements*

#### **50 Vertical agreements and land agreements.**

- (1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—
  - (a) vertical agreements, or
  - (b) land agreements,with such modifications as may be prescribed.
- (2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—
  - (a) vertical agreements, or land agreements, in general; or
  - (b) vertical agreements, or land agreements, of any prescribed description.
- (3) An order may empower the [<sup>F208</sup>CMA] to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.
- (4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.
- (5) In this section—
  - “land agreement” and “vertical agreement” have such meaning as may be prescribed; and
  - “prescribed” means prescribed by an order.

#### Textual Amendments

**F208** Word in s. 50(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 29** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*[<sup>F209</sup>CMA's] rules, guidance and fees*

#### Textual Amendments

**F209** Word in s. 51 cross-heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 30** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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## 51 Rules.

- (1) The [F210CMA] may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as [F211it] considers appropriate.
- (2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the [F212CMA] powers under this section.
- (3) If the [F213CMA] is preparing rules under this section [F214it] must consult such persons as he considers appropriate.
- (4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (5) No rule made by the [F215CMA] is to come into operation until it has been approved by an order made by the Secretary of State.
- (6) The Secretary of State may approve any rule made by the [F215CMA] —
  - (a) in the form in which it is submitted; or
  - (b) subject to such modifications as he considers appropriate.
- (7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the [F215CMA] of the proposed modifications and take into account any comments made by the [F215CMA] .
- (8) Subsections (5) to (7) apply also to any alteration of the rules made by the [F215CMA] .
- (9) The Secretary of State may, after consulting the [F215CMA] , by order vary or revoke any rules made under this section.
- (10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the [F215CMA] to exercise [F216its] powers under this section and make rules about that matter.

### Textual Amendments

- F210** Word in s. 51(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 31\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F211** Words in s. 51(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(38\)\(a\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F212** Word in s. 51(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 31\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F213** Word in s. 51(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 31\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F214** Words in s. 51(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(38\)\(c\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F215** Word in s. 51(5)-(10) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 31\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F216** Words in s. 51(10) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(38\)\(e\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 52 Advice and information.

- (1) [F217The CMA] must prepare and publish general advice and information about—



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- (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
  - (b) the enforcement of those prohibitions.
- [<sup>F218</sup>(1A) [<sup>F219</sup>The CMA] must prepare and publish general advice and information about—
- (a) the application of the prohibitions in [<sup>F220</sup>Article 101(1) and Article 102]; and
  - (b) the enforcement by it of those prohibitions.]
- (2) The [<sup>F221</sup>CMA] may at any time publish revised, or new, advice or information.
- (3) Advice and information published under this section must be prepared with a view to—
- (a) explaining provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the [<sup>F221</sup>CMA] expects such provisions to operate.
- (4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the [<sup>F221</sup>CMA] may take into account in considering whether, and if so how, to exercise a power conferred on [<sup>F222</sup>it] by Chapter I, II or III.
- (5) Any advice or information published by the [<sup>F221</sup>CMA] under this section is to be published in such form and in such manner as [<sup>F223</sup>it] considers appropriate.
- (6) If the [<sup>F221</sup>CMA] is preparing any advice or information under this section [<sup>F224</sup>it] must consult such persons as he considers appropriate.
- (7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—
- (a) the [<sup>F225</sup>CMA] ;
  - (b) the other regulators; and
  - (c) such other persons as he considers appropriate.

#### Textual Amendments

- F217** Words in s. 52(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 32(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F218** S. 52(1A) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 31(2)**
- F219** Words in s. 52(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 32(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F220** Words in s. 52(1A)(a) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F221** Word in s. 52(2)-(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 32(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F222** Words in s. 52(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(39)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F223** Words in s. 52(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(39)(c)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F224** Words in s. 52(6) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(39)(d)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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**F225** Word in s. 52(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 32(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**53 Fees.**

- [<sup>F226</sup>(1) The [<sup>F227</sup>OFT] may charge fees, of specified amounts, in connection with the exercise by [<sup>F227</sup>it] of specified functions under this Part.
- (2) Rules may, in particular, provide—
  - (a) for the amount of any fee to be calculated by reference to matters which may include—
    - (i) the turnover of any party to an agreement (determined in such manner as may be specified);
    - (ii) the turnover of a person whose conduct the [<sup>F227</sup>OFT] is to consider (determined in that way);
  - (b) for different amounts to be specified in connection with different functions;
  - (c) for the repayment by the [<sup>F227</sup>OFT] of the whole or part of a fee in specified circumstances;
  - (d) that an application or notice is not to be regarded as duly made or given unless the appropriate fee is paid.
- (3) In this section—
  - (a) “rules” means rules made by the [<sup>F227</sup>OFT] under section 51; and
  - (b) “specified” means specified in rules.]

**Textual Amendments**

**F226** S. 53 ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 32** (with reg. 6(2))

**F227** Words in s. 53 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(40)**; S.I. 2003/766, art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

*Regulators*

**54 Regulators.**

- (1) In this Part “regulator” means [<sup>F228</sup>—
  - [<sup>F229</sup>(a) the Office of Communications;]
  - (b) the Gas and Electricity Markets Authority;
  - [<sup>F230</sup>(c) . . . . .]
  - (d) [<sup>F231</sup>the Water Services Regulation Authority;]
  - (e) the [<sup>F232</sup>Office of Rail and Road];
  - (f) [<sup>F233</sup>the Northern Ireland Authority for Utility Regulation;]
  - (g) the Civil Aviation Authority][<sup>F234</sup>; [<sup>F235</sup>and]]
  - [<sup>F234</sup>(h) Monitor.]
  - [<sup>F236</sup>(i) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.]
  - [<sup>F237</sup>(j) the Financial Conduct Authority.]

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- (2) Parts II and III of Schedule 10 provide for functions of the [F238CMA] under this Part to be exercisable concurrently by regulators.
- (3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators' competition functions.
- (4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part ("Part I functions") which are exercisable concurrently by two or more competent persons as a result of [F239]any enactment (including any subordinate legislation) whenever passed or made].
- (5) The regulations may, in particular, make provision—
  - (a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;
  - (b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;
  - (c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;
  - (d) for Part I functions in a particular case to be exercised jointly—
    - (i) by the [F240CMA] and one or more regulators, or
    - (ii) by two or more regulators,and as to the procedure to be followed in such cases;
  - (e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;
  - (f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;
  - (g) for the person ("A") exercising Part I functions in a particular case—
    - (i) to appoint another competent person ("B") to exercise Part I functions on A's behalf in relation to the case; or
    - (ii) to appoint officers of B (with B's consent) to act as officers of A in relation to the case;
  - (h) for notification as to who is exercising Part I functions in respect of a particular case.

<sup>F241</sup>(6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State [F242, the CMA] or by such other person as may [F243]—

- (a) prescribe circumstances in which the CMA may decide that, in a particular case, it is to exercise Part 1 functions in respect of the case rather than a regulator;
- (b) be prescribed.

[ Where the regulations make provision as mentioned in subsection (6)(a), they must—

- <sup>F244</sup>(6A)
- (a) include provision requiring the CMA to consult the regulator concerned before making a decision that the CMA is to exercise Part 1 functions in respect of a particular case, and
  - (b) provide that, in a case where a regulator has given notice under section 31(1) that it proposes to make a decision (within the meaning given by section 31(2)), the CMA may only decide that it is to exercise Part 1 functions in respect of the case rather than the regulator if the regulator consents.]

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[ The Secretary of State may by regulations make provision requiring arrangements to  
 F245(6B) be made for the sharing of information between competent persons in connection with  
 concurrent cases.]

[ For the purposes of subsection (6B), “a concurrent case” is a case in respect of which—  
 F245(6C) (a) the CMA considers that Part 1 functions are, or (but for provision made under  
 subsection (5)(e)) would be, exercisable by both it and any regulator;  
 (b) any regulator considers that Part 1 functions are, or (but for provision made  
 under subsection (5)(e)) would be, exercisable by it.]

(7) “Competent person” means the [F246CMA] or any of the regulators.

[ In this section, “subordinate legislation” has the same meaning as in section 21(1) of  
 F247(8) the [Interpretation Act 1978 \(c 30\)](#) and includes an instrument made under—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.]]

#### Textual Amendments

- F228** Words in s. 54(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(41)** (a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F229** S. 54(1)(a) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), ss. **371(5)(a)**, 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F230** S. 54(1)(c) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 11(a)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F231** S. 54(1)(d) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 32(2)**; S.I. 2005/2714, art. 4(f)
- F232** Words in s. 54(1)(e) substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), **Sch. para. 4(m)**
- F233** S. 54(1)(f) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 11(b)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F234** S. 54(1)(h) and word inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **74(5)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F235** Word in s. 54(1)(g) omitted (1.11.2014 for specified purposes, 1.4.2015 so far as not already in force) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), ss. **67(2)**, 148(5); S.I. 2014/2458, arts. 2(a)(ii), 3(b)(iii)
- F236** S. 54(1)(i) inserted (1.11.2014 for specified purposes, 1.4.2015 so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), ss. **67(2)**, 148(5); S.I. 2014/2458, arts. 2(a)(ii), 3(b)(iii)
- F237** S. 54(1)(j) inserted (1.11.2014 for specified purposes, 1.4.2015 so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 9**; S.I. 2014/2458, arts. 2(b)(bb)(i), 3(b)(v)
- F238** Word in s. 54(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 33** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F239** Words in s. 54(4) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 33(2)**
- F240** Word in s. 54(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 33** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F241** Words in s. 54(6) inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 51(2)(b)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F242** Words in s. 54(6) inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 51(2)(b)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F243** Words in s. 54(6) inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 51(2)(a)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F244** S. 54(6A) inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 51(3)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F245** S. 54(6B)(6C) inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 51(4)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F246** Word in s. 54(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 33** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F247** S. 54(8) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 33(3)**

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**Modifications etc. (not altering text)**

- C71** S. 54(5)-(7) applied by 1986 c. 46, s. 9D(2) (as inserted (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)
- C72** S. 54(5)-(7) applied by S.I. 2002/3150 (N.I. 4), art. 13D(2) (as inserted (19.12.2005) by The Company Directors Disqualification (Amendment) (Northern Ireland) Order 2005 (S.I. 2005/1454), arts. 1(3), 3; S.R. 2005/514, art. 2)

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**Commencement Information**

- I7** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 76(3); s. 54(2) in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; s. 54(3) in force for certain purposes at 11.1.1999 and s. 54(4)-(7) in force at the same date by S.I. 1998/3166, **art. 2, Sch.**; s. 54(3) in force for certain purposes at 1.4.1999 by S.I. 1999/505, **art. 2, Sch. 2**; s. 54(1)(2) and (3) wholly in force at 1.3.2000 by S.I. 2000/344, **art. 2, Sch.**

*Confidentiality and immunity from defamation*

**F248** **55 General restrictions on disclosure of information.**

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**Textual Amendments**

- F248** S. 56 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 247(j)**, 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 6)

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**Modifications etc. (not altering text)**

- C73** S. 55 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), **s. 115**; S.I. 2003/2681, **art. 2(b)**

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**F248 56 Director and Secretary of State to have regard to certain matters in relation to the disclosure of information.**

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**Textual Amendments**

**F248** S. 56 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(j), 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 6)

**57 Defamation.**

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the [F249CMA] in the exercise of any of [F250its] functions under this Part.

**Textual Amendments**

**F249** Word in s. 57 substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 34 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F250** Words in s. 57 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(42); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

*Findings of fact by [F251CMA]*

**Textual Amendments**

**F251** Word in s. 58 cross-heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 35 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**58 Findings of fact by [F252CMA].**

(1) Unless the court [F253 or the Tribunal] directs otherwise [F254 or the [F255OFT] has decided to take further action in accordance with section 16(2) or 24(2)], [F256CMA's] finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—

- (a) the time for bringing an appeal [F257 under section 46 or 47] in respect of the finding has expired and the relevant party has not brought such an appeal; or
- (b) the decision of [F258 the Tribunal] on such an appeal has confirmed the finding.

(2) In this section—

[F259“ [F260 a CMA's] finding” means a finding of fact made by the [F261CMA] in the course of conducting an investigation;]

[F262“Part 1 proceedings” means proceedings brought otherwise than by the [F261CMA] —

(za) [F263 in respect of an infringement decision;]

- (a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; or



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- (b) in respect of an alleged infringement of the prohibitions in <sup>F264</sup>Article 101(1) or Article 102];  
“relevant party” means—
- (a) in relation to the Chapter I prohibition <sup>F265</sup>or the prohibition in <sup>F264</sup>Article 101(1), a party to the agreement which <sup>F266</sup>has been found to have infringed the prohibition or is alleged to have infringed the prohibition (as the case may be)]; and
- (b) in relation to the Chapter II prohibition <sup>F267</sup>or the prohibition in <sup>F264</sup>Article 102], the undertaking whose conduct <sup>F266</sup>has been found to have infringed the prohibition or is alleged to have infringed the prohibition (as the case may be)].
- (3) Rules of court <sup>F268</sup>or Tribunal rules] may make provision in respect of assistance to be given by the <sup>F269</sup>CMA] to the court <sup>F270</sup>or the Tribunal] in Part I proceedings.
- <sup>F271</sup>(4) In this section “the court” means—
- (a) in England and Wales or Northern Ireland, the High Court,
- (b) in Scotland, the Court of Session or the sheriff.]

#### Textual Amendments

- F252** Word in s. 58 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 36(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F253** Words in s. 58(1) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 13(2)**; S.I. 2015/1630, art. 3(j)
- F254** Words in s. 58(1) cease to have effect (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 34(2)** (with reg. 6(2))
- F255** Word in s. 58 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(43)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F256** Words in s. 58(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 36(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F257** Words in s. 58(1)(a) inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 5 para. 5(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F258** Words in s. 58(1)(b) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 5 para. 5(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F259** Words in s. 58(2) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 34(3)(a)**
- F260** Words in s. 58(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 36(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F261** Word in s. 58(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 36(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F262** Words in s. 58(2) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 34(3)(b)**
- F263** Words in s. 58(2) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 13(3)(a)**; S.I. 2015/1630, art. 3(j)
- F264** Words in s. 58(2) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F265** Words in s. 58(2) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 34(3)(c)(i)**
- F266** Words in s. 58(2) substituted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 13(3)(b)**; S.I. 2015/1630, art. 3(j)

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- F267** Words in s. 58(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 34(3)(c)(ii)**
- F268** Words in s. 58(3) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 13(4)(a)**; S.I. 2015/1630, art. 3(j)
- F269** Word in s. 58(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 36(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F270** Words in s. 58(3) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 13(4)(b)**; S.I. 2015/1630, art. 3(j)
- F271** S. 58(4) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 13(5)**; S.I. 2015/1630, art. 3(j)

### *[<sup>F272</sup>Findings of infringements]*

#### **Textual Amendments**

- F272** S. 58A and cross-heading inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 20(1)(2), 279 (with s. 20(2)); S.I. 2003/1397, art. 2(1), Sch.

### **[<sup>F273</sup>58A] Infringement decisions**

- (1) This section applies to a claim in respect of an infringement decision which is brought in proceedings—
  - (a) before the court, or
  - (b) before the Tribunal under section 47A or 47B.
- (2) The court or the Tribunal is bound by the infringement decision once it has become final.
- (3) An infringement decision specified in section 47A(6)(a) or (b) becomes final—
  - (a) when the time for appealing against that decision expires without an appeal having been brought; [<sup>F274</sup> or
  - (b) where an appeal has been brought against the decision, when—
    - (i) the appeal and any further appeal in relation to the decision has been decided or has otherwise ended, and
    - (ii) the time for appealing against the result of the appeal or further appeal has expired without another appeal having been brought.]
- (4) An infringement decision specified in section 47A(6)(c) becomes final—
  - (a) when the time for appealing against that decision in the European Court expires without an appeal having been brought; or
  - [<sup>F275</sup>(b) where such an appeal has been brought against the decision, when—
    - (i) the appeal and any further appeal in the European Court in relation to the decision has been decided or has otherwise ended, and
    - (ii) the time for appealing against the result of the appeal or further appeal in the European Court has expired without another appeal having been brought.]
- (5) This section applies to the extent that the court or the Tribunal would not otherwise be bound by the infringement decision in question.
- (6) In this section “the court” means—

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

#### Textual Amendments

- F273** S. 58A substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 8 para. 14\(1\)](#) (with [Sch. 8 para. 14\(2\)](#)); S.I. 2015/1630, art. 3(j)
- F274** S. 58A(3)(b) and word substituted for s. 58A(3)(b)-(d) (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\), reg. 1\(2\), Sch. 2 para. 8\(2\)](#) (with [Sch. 2 para. 8\(4\)](#))
- F275** S. 58A(4)(b) substituted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\), reg. 1\(2\), Sch. 2 para. 8\(3\)](#) (with [Sch. 2 para. 8\(4\)](#))

#### *Interpretation and governing principles*

### 59 [F276 Interpretation of Part 1].

(1) In this Part—

- [F277 "agreement" is to be read with section 2(5) and (6);]
- F278 ...
- [F279 "Article 101(1)" means Article 101(1) of the Treaty;]
- [F279 "Article 101(3)" means Article 101(3) of the Treaty;]
- [F279 "Article 102" means Article 102 of the Treaty;]
- "block exemption" has the meaning given in section 6(4);
- "block exemption order" has the meaning given in section 6(2);
- "the Chapter I prohibition" has the meaning given in section 2(8);
- "the Chapter II prohibition" has the meaning given in section 18(4);
- [F280 "class member" has the meaning given in section 47B(8)(a);]
- [F281 "the CMA" means the Competition and Markets Authority;]
- [F280 "collective proceedings" has the meaning given in section 47B(1);]
- [F280 "collective proceedings order" means an order made by the Tribunal authorising the continuance of collective proceedings;]
- "the Commission" F282... means the European Commission;
- "the Council" means the Council of the European Union;
- "the court", except in sections [F283 49E,] 58[F284, 58A] and 60 [F285 and Schedule 8A] and the expression "European Court", means—
- (a) in England and Wales, the High Court;
- (b) in Scotland, the Court of Session; and
- (c) in Northern Ireland, the High Court;
- F286 ...
- "document" includes information recorded in any form;
- "the EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;
- "the European Court" means the Court of Justice of the European Communities and includes the [F279 General Court];

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[<sup>F287</sup>“the EC Competition Regulation” means Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;]

[<sup>F288</sup>“individual exemption” has the meaning given in section 4(2);]

“information” includes estimates and forecasts;

[<sup>F280</sup>“infringement decision”, except in section 49C, has the meaning given in section 47A(6);]

[<sup>F280</sup>“injunction” includes an interim injunction;]

“investigating officer” has the meaning given in section 27(1);

[<sup>F289</sup>“investigation” means an investigation under section 25;]

“Minister of the Crown” has the same meaning as in the Ministers of the <sup>M3</sup>Crown Act 1975;

[<sup>F290</sup>“OFCOM” means the Office of Communications;]

“officer”, in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;

[<sup>F280</sup>“opt-in collective proceedings” has the meaning given in section 47B(10);]

[<sup>F280</sup>“opt-out collective proceedings” has the meaning given in section 47B(11);]

<sup>F291</sup> ...

“parallel exemption” has the meaning given in section 10(3);

“person”, in addition to the meaning given by the <sup>M4</sup>Interpretation Act 1978, includes any undertaking;

[<sup>F292</sup>“premises” includes any land or means of transport;]

“prescribed” means prescribed by regulations made by the Secretary of State;

“regulator” has the meaning given by section 54;

[<sup>F280</sup>“representative” means a person who is authorised by a collective proceedings order to bring collective proceedings;]

[<sup>F280</sup>“represented person” means a class member who—

- (a) has opted in to opt-in collective proceedings,
- (b) was domiciled in the United Kingdom at the time specified for the purposes of determining domicile (see section 47B(11)(b)(i)) and has not opted out of opt-out collective proceedings, or
- (c) has opted in to opt-out collective proceedings;]

“section 11 exemption” has the meaning given in section 11(3); and

[<sup>F279</sup>“the Treaty” means the Treaty on the Functioning of the European Union;]

[<sup>F293</sup>“the Tribunal” means the Competition Appeal Tribunal;

“Tribunal rules” means rules under section 15 of the Enterprise Act 2002.]

[<sup>F294</sup>“working day” means a day which is not—

- (a) Saturday,
- (b) Sunday,
- (c) Christmas Day,
- (d) Good Friday, or
- (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.]

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[<sup>F295</sup>(1A) In this Part, in respect of proceedings in Scotland, [<sup>F296</sup>“claimant” is to be read as “pursuer” and] “defendant” is to be read as “defender”.

(1B) Sections 41, 42, 45 and 46 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether a person is regarded as “domiciled in the United Kingdom” for the purposes of this Part.]

(2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

(3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

(4) Any power conferred on the [<sup>F297</sup>CMA] by this Part to require information includes power to require any document which [<sup>F298</sup>it] believes may contain that information.

#### Textual Amendments

- F276** Words in s. 59 sidenote substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 35(3)**
- F277** Words in s. 59(1) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 35(2)(a)**
- F278** Words in s. 59(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 6(a), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F279** Words in s. 59(1) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F280** Words in s. 59(1) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 15(2)**; S.I. 2015/1630, art. 3(j)
- F281** Words in s. 59(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 38(2)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F282** Words in s. 59(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 221** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F283** Word in s. 59(1) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 8 para. 15(3)**; S.I. 2015/1630, art. 3(j)
- F284** Word in s. 59(1) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 20(3)**, 279; S.I. 2003/1397, art. 2(1), Sch.
- F285** Words in s. 59(1) inserted (9.3.2017) by The Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017 (S.I. 2017/385), reg. 1(2), **Sch. 2 para. 9(2)**
- F286** Words in s. 59(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(44)(a), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F287** Words in s. 59(1) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 35(2)(d)**
- F288** Words in s. 59(1) cease to have effect (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 35(2)(e)** (with reg. 6(2))
- F289** Words in s. 59(1) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 35(2)(f)**



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- F290** Words in s. 59(1) inserted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by **Communications Act 2003 (c. 21), ss. 371(7), 411(2)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F291** Words in s. 59(1) omitted (1.4.2014) by virtue of **Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 38(2)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F292** Words in s. 59(1) substituted (1.5.2004) by **The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 35(2)(g)**
- F293** Words in s. 59(1) inserted (1.4.2003) by **Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 6(b), Sch. 26; S.I. 2003/766, art. 2, Sch.** (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F294** Words in s. 59(1) inserted (1.5.2004) by **The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 35(2)(h)**
- F295** S. 59(1A)(1B) inserted (1.10.2015) by **Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 15(4); S.I. 2015/1630, art. 3(j)**
- F296** Words in s. 59(1A) inserted (9.3.2017) by **The Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017 (S.I. 2017/385), reg. 1(2), Sch. 2 para. 9(3)**
- F297** Word in s. 59(4) substituted (1.4.2014) by **Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 38(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F298** Words in s. 59(4) substituted (1.4.2003) by **Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(44)(b); S.I. 2003/766, art. 2, Sch.** (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Commencement Information

- I8** S. 59 wholly in force at 11.1.1999; s. 59 not in force at Royal Assent see s. 76(3); s. 59 in force for certain purposes at 26.11.1998 by **S.I. 1998/2750, art. 2**; s. 59 in force in so far as not already in force by **S.I. 1998/3166, art. 2, Sch.**

#### Marginal Citations

- M3** 1975 c. 26.  
**M4** 1978 c. 30.

## 60 Principles to be applied in determining questions.

- (1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in [<sup>F299</sup>EU] law in relation to competition within [<sup>F25</sup>the European Union].
- (2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—
  - (a) the principles applied, and decision reached, by the court in determining that question; and
  - (b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in [<sup>F299</sup>EU] law.
- (3) The court must, in addition, have regard to any relevant decision or statement of the Commission.
- (4) Subsections (2) and (3) also apply to—



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- (a) the [F300CMA] ; and
  - (b) any person acting on behalf of the [F300CMA] , in connection with any matter arising under this Part.
- (5) In subsections (2) and (3), “court” means any court or tribunal.
- (6) In subsections (2)(b) and (3), “decision” includes a decision as to—
- (a) the interpretation of any provision of [F299EU] law;
  - (b) the civil liability of an undertaking for harm caused by its infringement of [F299EU] law.

#### Textual Amendments

- F25** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F299** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F300** Word in s. 60(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 39](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### Modifications etc. (not altering text)

- C74** S. 60 applied by 1986 c. 46, s. 9A(11) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 204\(2\)](#), 279; S.I. 2003/1397, art. 2(1), Sch.)
- C75** S. 60 applied by S.I. 2002/3150 (N.I. 4), art. 13A(11) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; S.R. 2005/514, art. 2)

## PART II

### [F301]INSPECTIONS UNDER ARTICLES 20, 21 AND 22(2)

#### Textual Amendments

- F301** Pt. 2 heading substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 36](#)

### [F302]61 Interpretation of Part 2

In this Part—

“Article 20 inspection” means an inspection ordered by a decision of the Commission under Article 20(4) of the EC Competition Regulation which is not an Article 22(2) inspection;

“Article 21 inspection” means an inspection ordered by a decision of the Commission under Article 21 of the EC Competition Regulation;

“Article 22(2) inspection” means an inspection requested by the Commission under Article 22(2) of the EC Competition Regulation;

“books and records” includes books and records stored on any medium;

[F303“the CMA” means the Competition and Markets Authority]

“the Commission” means the European Commission;

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“the EC Competition Regulation” means Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;

<sup>F304</sup>

...

“premises” includes any land or means of transport;

<sup>F305</sup>“the Treaty” means the Treaty on the Functioning of the European Union]

<sup>F306</sup>“the Tribunal” means the Competition Appeal Tribunal;]

<sup>F306</sup>“Tribunal rules” means rules under section 15 of the Enterprise Act 2002;]]

### Textual Amendments

**F302** S. 61 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 36**

**F303** Words in s. 61(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 40(a)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

**F304** Word in s. 61(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 40(b)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

**F305** Words in s. 61 substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

**F306** Words in s. 61 inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 4**; S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

## 62 <sup>F307</sup>Power to enter business premises under a warrant: Article 20 inspections]

<sup>F308</sup>(1) On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—]

<sup>F309</sup>(a) the Commission has ordered an Article 20 inspection;

(b) the Article 20 inspection is being, or is likely to be, obstructed; and

(c) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard to the subject matter of the Article 20 inspection.]

(2) <sup>F310</sup>An Article 20 inspection] is being obstructed if—

(a) <sup>F311</sup>a Commission official], exercising his power in accordance with <sup>F312</sup>Article 20(3) of the EC Competition Regulation], has attempted to enter <sup>F313</sup>any business premises] but has been unable to do so; and

(b) there are reasonable grounds for suspecting that there <sup>F314</sup>on any business premises] are books or records<sup>F315</sup> on the premises] which the Commission official has power to examine.

(3) <sup>F316</sup>An Article 20 inspection] is also being obstructed if there are reasonable grounds for suspecting that there are <sup>F317</sup>on any business premises] books or records <sup>F318</sup>on the premises]—

(a) the production of which has been required by <sup>F319</sup>a Commission official] exercising his power in accordance with <sup>F320</sup>Article 20(3) of the EC Competition Regulation]; and

(b) which have not been produced as required.

(4) <sup>F321</sup>An Article 20 inspection] is likely to be obstructed if—

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- (a) [F322] an official of the Commission (“the Commission official”) is authorised for the purpose of the investigation;
  - (b) there are reasonable grounds for suspecting that there are [F323] on any business premises] books or records [F324] on the premises] which [F325] a Commission official] has power to examine; and
  - (c) there are also reasonable grounds for suspecting that, if the Commission official attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- [F326](5) A warrant under this section shall authorise a named officer of the [F327]CMA] and any other [F327]CMA] officer, or Commission official, accompanying the named officer—
- (a) to enter any business premises specified in the warrant using such force as is reasonably necessary for the purpose;
  - (b) to search for books and records which a Commission official has power to examine, using such force as is reasonably necessary for the purpose;
  - (c) to take or obtain copies of or extracts from such books and records;
  - (d) to seal the premises, any part of the premises or any books or records which a Commission official has power to seal, for the period and to the extent necessary for the inspection.]
- [F328](5A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.]
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
  - (7) On leaving any premises entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
  - (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- [F329](8A) An application for a warrant under this section must be made—
- (a) in the case of an application to the High Court, in accordance with rules of court;
  - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.
- [F330](10) In this section—
- “business premises” means any premises of an undertaking or association of undertakings which a Commission official has under Article 20 of the EC Competition Regulation power to enter in the course of the Article 20 inspection;
  - “Commission official” means any of the persons authorised by the Commission to conduct the Article 20 inspection; and
  - “ [F327]CMA] officer” means any officer of the [F327]CMA] whom the [F327]CMA] has authorised in writing to accompany the named officer.

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- (11) In subsection (10), the reference in the definition of “business premises” to Article 20 of the EC Competition Regulation does not include a reference to that Article as applied by Article 21 of that Regulation.]

### Textual Amendments

- F307** Words in s. 62 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(8)**
- F308** Words in s. 62(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 5(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F309** Words in s. 62(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(2)**
- F310** Words in s. 62(2) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(3)(a)**
- F311** Words in s. 62(2)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(3)(b)(i)**
- F312** Words in s. 62(2)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(3)(b)(ii)**
- F313** Words in s. 62(2)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(3)(b)(iii)**
- F314** Words in s. 62(2)(b) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(3)(c)(ii)**
- F315** Words in s. 62(2)(b) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(3)(c)(i)** (with reg. 6(2))
- F316** Words in s. 62(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(4)(a)**
- F317** Words in s. 62(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(4)(c)**
- F318** Words in s. 62(3) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(4)(b)** (with reg. 6(2))
- F319** Words in s. 62(3)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(4)(d)(i)**
- F320** Words in s. 62(3)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(4)(d)(ii)**
- F321** Words in s. 62(4) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(5)(a)**
- F322** S. 62(4)(a) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(5)(b)** (with reg. 6(2))
- F323** Words in s. 62(4)(b) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(5)(c)(i)**
- F324** Words in s. 62(4)(b) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(5)(c)(ii)** (with reg. 6(2))
- F325** Words in s. 62(4)(b) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(5)(c)(iii)**
- F326** S. 62(5) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 37(6)**
- F327** Word in s. 62(5)(10) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 41** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F328** S. 62(5A) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 203(3), 279; S.I. 2003/1397, art. 2(1), Sch.
- F329** S. 62(8A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 13 para. 5(3); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F330** S. 62(10)(11) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 37(7)

## [<sup>F331</sup>62A Power to enter non-business premises under a warrant: Article 21 inspections

- (1) [<sup>F332</sup>On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—]
- (a) the Commission has ordered an Article 21 inspection; and
  - (b) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard in particular to the matters mentioned in subsection (2).
- (2) Those matters are—
- (a) the seriousness of the suspected infringement of [<sup>F333</sup>Article 101(1) or 102] of the Treaty;
  - (b) the importance of the evidence sought;
  - (c) the involvement of the undertaking or association of undertakings concerned; and
  - (d) whether it is reasonably likely that business books and records relating to the subject matter of the Article 21 inspection are kept on the non-business premises that would be specified in the warrant.
- (3) A warrant under this section shall authorise a named officer of the [<sup>F334</sup>CMA] and any other [<sup>F334</sup>CMA] officer, or Commission official, accompanying the named officer to enter any non-business premises specified in the warrant.
- (4) A warrant under this section may authorise a named officer of the [<sup>F334</sup>CMA] and any other [<sup>F334</sup>CMA] officer, or Commission official, accompanying the named officer to search for books or records which a Commission official has power to examine.
- (5) A warrant under this section may authorise a named officer of the [<sup>F334</sup>CMA] and any other [<sup>F334</sup>CMA] officer, or Commission official, accompanying the named officer to take or obtain copies of books or records of which a Commission official has power to take or obtain copies.
- (6) A warrant granted under this section may authorise the use, for either or both of the purposes mentioned in subsections (3) and (4), of such force as is reasonably necessary.
- (7) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (8) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (9) On leaving any premises entered by virtue of a warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

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(10) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

[ An application for a warrant under this section must be made—

- <sup>F335</sup>(10A) (a) in the case of an application to the High Court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]

(11) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

(12) In this section—

“non-business premises” means any premises to which a decision of the Commission ordering the Article 21 inspection relates;

“Commission official” means any of the persons authorised by the Commission to conduct the Article 21 inspection; and

“<sup>F336</sup>CMA officer” means any officer of the <sup>F336</sup>CMA whom the <sup>F336</sup>CMA has authorised in writing to accompany the named officer.]

#### Textual Amendments

**F331** S. 62A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 38**

**F332** Words in s. 62A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 6(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F333** Words in s. 62A(2)(a) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

**F334** Word in ss. 62A(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 42** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F335** S. 62A(10A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 6(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F336** Word in s. 62A(12) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 42** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### <sup>F337</sup>62B Powers when conducting an Article 22(2) inspection

(1) For the purposes of an Article 22(2) inspection, an authorised officer of the <sup>F338</sup>CMA has the powers specified in Article 20(2) of the EC Competition Regulation.

(2) For the purposes of this section and section 63—

“authorised officer of the <sup>F338</sup>CMA” means any officer of the <sup>F338</sup>CMA to whom an authorisation has been given; and

“authorisation” means an authorisation given in writing by the <sup>F338</sup>CMA for the purposes of the Article 22(2) inspection which—

- (i) identifies the officer;
- (ii) indicates the subject matter and purpose of the inspection; and
- (iii) draws attention to any penalties which a person may incur under the EC Competition Regulation in connection with the inspection.]



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### Textual Amendments

**F337** S. 62B inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 39](#)

**F338** Word in s. 62B(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 43](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 63** [F339 **Power to enter business premises under a warrant: Article 22(2) inspections**].
- (1) [F340 On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—]
- [F341(a) the Commission has requested the [F342 CMA] to conduct an Article 22(2) inspection which the Commission has ordered by a decision under Article 20(4) of the EC Competition Regulation;
- (b) the Article 22(2) inspection is being, or is likely to be, obstructed; and
- (c) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard to the subject matter of the Article 22(2) inspection.]
- (2) [F343 An Article 22(2) inspection] is being obstructed if—
- (a) an authorised officer of the [F344 CMA] has attempted to enter [F345 any business] premises but has been unable to do so;
- (b) the officer has produced his authorisation to the undertaking, or association of undertakings, concerned; and
- (c) there are reasonable grounds for suspecting that there are [F346 on any business premises] books or records [F347 on the premises] which the officer has power to examine.
- (3) [F348 An Article 22(2) inspection] is also being obstructed if—
- (a) there are reasonable grounds for suspecting that there are [F349 on any business premises] books or records [F350 on the premises] which an authorised officer of the [F344 CMA] has power to examine;
- (b) the officer has produced his authorisation to the undertaking, or association of undertakings, and has required production of the books or records; and
- (c) the books and records have not been produced as required.
- (4) [F351 An Article 22(2) inspection] is likely to be obstructed if—
- (a) there are reasonable grounds for suspecting that there are [F352 on any business premises] books or records [F353 on the premises] which an authorised officer of the [F344 CMA] has power to examine; and
- (b) there are also reasonable grounds for suspecting that, if the officer attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- [F354 (5) A warrant under this section shall authorise a named authorised officer of the [F344 CMA] and any other authorised officer of the [F344 CMA], or Commission official, accompanying the named authorised officer—
- (a) to enter any business premises specified in the warrant using such force as is reasonably necessary for the purpose;
- (b) to search for books and records which an authorised officer of the [F344 CMA] has power to examine, using such force as is reasonably necessary for the purpose;

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- (c) to take or obtain copies of or extracts from such books and records; and
  - (d) to seal the premises, any part of the premises or any books or records which an authorised officer of the [F344CMA] has power to seal, for the period and to the extent necessary for the inspection.]
- [F355(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named authorised officer who is executing it.]
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
  - (7) On leaving any premises which he has entered by virtue of the warrant the [F356 named authorised officer] must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
  - (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- [F357(8A) An application for a warrant under this section must be made—
- (a) in the case of an application to the High Court, in accordance with rules of court;
  - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.
- [F358(10) In this section—
- “business premises” means any premises of an undertaking or association of undertakings which an authorised officer of the [F359CMA] has power to enter in the course of the Article 22(2) inspection;
  - “Commission official” means any person authorised by the Commission to assist with the Article 22(2) inspection.]

#### Textual Amendments

- F339** Words in s. 63 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 40(9)**
- F340** Words in s. 63(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 7(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F341** Words in s. 63(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 40(2)(b)**
- F342** Word in s. 63(1)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 44** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F343** Words in s. 63(2) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 40(3)(a)**
- F344** Word in s. 63(2)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 44** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F345** Words in s. 63(2)(a) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 40(3)(b)**
- F346** Words in s. 63(2)(c) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 40(3)(c)(ii)**

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- F347** Words in s. 63(2)(c) cease to have effect (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(3)(c)(i)** (with reg. 6(2))
- F348** Words in s. 63(3) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(4)(a)**
- F349** Words in s. 63(3)(a) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(4)(b)(ii)**
- F350** Words in s. 63(3)(a) cease to have effect (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(4)(b)(i)** (with reg. 6(2))
- F351** Words in s. 63(4) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(5)(a)**
- F352** Words in s. 63(4)(a) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(5)(b)(ii)**
- F353** Words in s. 63(4)(a) cease to have effect (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(5)(b)(i)** (with reg. 6(2))
- F354** S. 63(5) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(6)**
- F355** S. 63(5A) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 203(4)**, 279; S.I. 2003/1397, art. 2(1), Sch.
- F356** Words in s. 63(7) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(7)**
- F357** S. 63(8A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 7(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F358** S. 63(10) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 40(8)**
- F359** Word in s. 63(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 44** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**64 Entry of premises under sections 62<sup>[F360]</sup>, 62A] and 63: supplementary.**

- (1) A warrant issued under section 62<sup>[F361]</sup>, 62A] or 63 must indicate—
- the subject matter and purpose of the <sup>[F362]</sup>inspection];
  - the nature of the offence created by section 65.
- (2) The powers conferred by section 62<sup>[F363]</sup>, 62A] or 63 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
- take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
  - if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
- <sup>[F364]</sup>“named officer” means—

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- (a) for the purposes of a warrant issued under section 62 or 62A, the officer named in the warrant; and
  - (b) for the purposes of a warrant issued under section 63, the authorised officer named in the warrant;]
- “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

#### Textual Amendments

- F360** Words in s. 64 sidenote inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 41\(4\)](#)
- F361** Words in s. 64(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 41\(4\)](#)
- F362** Word in s. 64(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 41\(2\)](#)
- F363** Words in s. 64(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 41\(4\)](#)
- F364** Words in s. 64(5) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 41\(3\)](#)

## 65 Offences.

- (1) A person is guilty of an offence if he intentionally obstructs any person in the exercise of his powers under a warrant issued under section 62<sup>F365</sup>, 62A] or 63.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Textual Amendments

- F365** Words in s. 65(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 42\(2\)](#)

## <sup>F366</sup>65A Privileged communications: Article 22(2) inspections

- (1) A person shall not be required, by virtue of any provision of section 62B or 63, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—
  - (a) between a professional legal adviser and his client, or
  - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
 which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (3) In the application of this section to Scotland—
  - (a) the reference to the High Court is to be read as a reference to the Court of Session; and

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- (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.]

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**Textual Amendments**

**F366** Ss. 65A, 65B inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 43](#)

**[<sup>F366</sup>65B Use of statements in prosecution: Article 22(2) inspections**

A statement made by a person in response to a requirement imposed by virtue of section 62B or 63 may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and  
(b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.]

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**Textual Amendments**

**F366** Ss. 65A, 65B inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 43](#)

**[<sup>F367</sup>PART 2A**

ARTICLE 22(1) INVESTIGATIONS

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**Textual Amendments**

**F367** Pt. 2A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 44](#)

**65C Interpretation of Part 2A**

- (1) In this Part—

“Article 22(1) investigation” means an investigation conducted by the [<sup>F368</sup>CMA] on behalf and for the account of a competition authority of another Member State pursuant to Article 22(1) of the EC Competition Regulation;

“the Commission” means the European Commission;

“competition authority of another Member State” means a competition authority designated as such under Article 35 of the EC Competition Regulation by a Member State other than the United Kingdom;

“the EC Competition Regulation” means Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; and

“investigating officer” has the meaning given in section 65F(1).

- (2) In this Part, the following expressions have the same meanings as in Part 1—

[<sup>F369</sup>“the CMA”];]

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“<sup>F370</sup>Article 101(1)”;  
 “<sup>F370</sup>Article 102”;  
 “the court”;  
 “document”;  
 “information”;  
 “officer”;  
<sup>F371</sup>  
 ...  
 “person”;  
 “premises”  
 “the Treaty”; and  
<sup>F372</sup>“the Tribunal;”]  
<sup>F372</sup>“Tribunal rules;”]  
 “working day”.

- (3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.
- (4) Any power conferred on the [<sup>F373</sup>CMA] by this Part to require information includes power to require any document which it believes may contain that information.

#### Textual Amendments

- F368** Word in s. 65C(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 45(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F369** Words in s. 65C(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 45(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F370** Words in s. 65C(2) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F371** Words in s. 65C(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 45(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F372** Words in s. 65C(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 8**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F373** Word in s. 65C(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 45(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 65D Power to conduct an Article 22(1) investigation

- (1) In any of the following cases, the [<sup>F374</sup>CMA] may conduct an Article 22(1) investigation.
- (2) The first case is where there are reasonable grounds for suspecting that there is an agreement which—
- may affect trade between Member States; and
  - has as its object or effect the prevention, restriction or distortion of competition within [<sup>F25</sup>the European Union].
- (3) The second case is where there are reasonable grounds for suspecting that the prohibition in [<sup>F375</sup>Article 102] has been infringed.



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- (4) The third case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade between Member States; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within [<sup>F25</sup>the European Union].
- (5) It is immaterial for the purposes of subsection (4) whether the agreement in question remains in existence.
- (6) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

#### Textual Amendments

- F25** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F374** Word in s. 65D(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 46](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F375** Words in s. 65D(3) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), [Sch. Pt. 1](#) (with art. 2(2))

### 65E Powers when conducting Article 22(1) investigations

- (1) For the purposes of an Article 22(1) investigation, the [<sup>F376</sup>CMA] may require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—
  - (a) the subject matter and purpose of the Article 22(1) investigation; and
  - (b) the nature of the offences created by sections 65L to 65N.
- (4) In subsection (1) “specified” means—
  - (a) specified, or described, in the notice; or
  - (b) falling within a category which is specified, or described, in the notice.
- (5) The [<sup>F377</sup>CMA] may also specify in the notice—
  - (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
  - (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;

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- (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

#### Textual Amendments

**F376** Word in s. 65E(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 47](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F377** Word in s. 65E(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 47](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 65F Power to enter business premises without a warrant

- (1) Any officer of the [<sup>F378</sup>CMA] who is authorised in writing by the [<sup>F378</sup>CMA] to do so (“an investigating officer”) may enter any business premises in connection with an Article 22(1) investigation.
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to 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 purpose of the Article 22(1) investigation; and
  - (c) indicates the nature of the offences created by sections 65L to 65N.
- (3) Subsection (2) does not apply—
  - (a) if the [<sup>F379</sup>CMA] has a reasonable suspicion that the premises are, or have been, occupied by—
    - (i) a party to an agreement which it is investigating under section 65D; or
    - (ii) an undertaking the conduct of which it is investigating under section 65D; or
  - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
  - (a) evidence of his authorisation; and
  - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
  - (a) take with him such equipment as appears to him to be necessary;
  - (b) require any person on the premises—
    - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
    - (ii) if the document is produced, to provide an explanation of it;
  - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
  - (d) take copies of, or extracts from, 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 investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and

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- (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form;
  - (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he consider relates to any matter relevant to the investigation.
- (6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.

#### Textual Amendments

**F378** Word in s. 65F(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 48 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F379** Word in s. 65F(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 48 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 65G Power to enter business premises under a warrant

- (1) [<sup>F380</sup>On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any business premises documents—
    - (i) the production of which has been required under section 65E or 65F; and
    - (ii) which have not been produced as required;
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any business premises documents which the [<sup>F381</sup>CMA] has power under section 65E to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
  - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 65F but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the [<sup>F382</sup>CMA] and any other of its officers whom the [<sup>F382</sup>CMA] has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;

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- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the Article 22(1) investigation, 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.
- (3) If, in the case of a warrant under subsection (1)(b), [<sup>F383</sup>the court or (as the case may be) the Tribunal] is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the Article 22(1) investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- [ An application for a warrant under this section must be made—
- <sup>F384</sup>(8A) (a) in the case of an application to the court, in accordance with rules of court;  
 (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- (9) In this section “business premises” has the same meaning as in section 65F.

#### Textual Amendments

**F380** Words in s. 65G(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 9(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F381** Word in s. 65G(1)(b)(i) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 49** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F382** Word in s. 65G(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 49** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F383** Words in s. 65G(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 9(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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**F384** S. 65G(8A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 13 para. 9(4); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## **65H Power to enter domestic premises under a warrant**

- (1) <sup>F385</sup>On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any domestic premises documents—
    - (i) the production of which has been required under section 65E; and
    - (ii) which have not been produced as required; or
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any domestic premises documents which the <sup>F386</sup>CMA has power under section 65E to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise a named officer of the <sup>F387</sup>CMA, and any other of its officers whom the <sup>F387</sup>CMA has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge or belief, where it may be found;
  - (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, 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.
- (3) If, in the case of a warrant under subsection (1)(b), <sup>F388</sup>the court or (as the case may be) the Tribunal] is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

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- (4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
  - (5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
  - (6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
  - (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
  - (8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- [ An application for a warrant under this section must be made—
- <sup>F389</sup>(8A) (a) in the case of an application to the court, in accordance with rules of court;  
(b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- (9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—
    - (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
    - (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.

#### Textual Amendments

- F385** Words in s. 65H(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 10(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F386** Word in s. 65H(1)(b)(i) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 50** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F387** Word in s. 65H(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 50** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F388** Words in s. 65H(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 10(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F389** S. 65H(8A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 10(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 65I Entry of premises under a warrant: supplementary

- (1) A warrant issued under section 65G or 65H must indicate—
  - (a) the subject matter of the Article 22(1) investigation;
  - (b) the nature of the offences created by sections 65L to 65N.
- (2) The powers conferred by section 65G or 65H are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—



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- (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 him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
- “named officer” means the officer named in the warrant; and
  - “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

## **65J Privileged communications**

- (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—
- (a) between a professional legal adviser and his client, or
  - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
- which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (3) In the application of this section to Scotland—
- (a) the reference to the High Court is to be read as a reference to the Court of Session; and
  - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

## **65K Use of statements in prosecution**

A statement made by a person in response to a requirement imposed by virtue of any of sections 65E to 65H may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.

## **65L Offences**

- (1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 65E, 65F, 65G or 65H.
- (2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—
- (a) that the document was not in his possession or under his control; and
  - (b) that it was not reasonably practicable for him to comply with the requirement.
- (3) If a person is charged with an offence under subsection (1) in respect of a requirement—

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- (a) to provide information,
  - (b) to provide an explanation of a document, or
  - (c) to state where a document is to be found,
- it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 65E or 65F is not an offence if the person imposing the requirement has failed to act in accordance with that section.
- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 65F.
- (6) A person guilty of an offence under subsection (1) or (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 65G or 65H is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### **65M Destroying or falsifying documents**

- (1) A person is guilty of an offence if, having been required to produce a document under section 65E, 65F, 65G or 65H—
- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
  - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### **65N False or misleading information**

- (1) If information is provided by a person to the [F390CMA] in connection with any function of the [F390CMA] under this Part, that person is guilty of an offence if—
- (a) the information is false or misleading in a material particular; and
  - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
  - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the [F390CMA] in connection with any of its functions under this Part, is guilty of an offence.

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- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]

**Textual Amendments**

**F390** Word in s. 65N(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 51](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**PART III**

MONOPOLIES

<sup>F391</sup>**66 Monopoly investigations: general.**

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**Textual Amendments**

**F391** S. 67 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with art. 8)

<sup>F391</sup>**67 Offences.**

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**Textual Amendments**

**F391** S. 67 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with art. 8)

**68 Services relating to use of land.**

In section 137 of the Fair Trading Act 1973, after subsection (3) insert—

“(3A) The Secretary of State may by order made by statutory instrument—

- (a) provide that “the supply of services” in the provisions of this Act is to include, or to cease to include, any activity specified in the order which consists in, or in making arrangements in connection with, permitting the use of land; and
- (b) for that purpose, amend or repeal any of paragraphs (c), (d), (e) or (g) of subsection (3) above.

(3B) No order under subsection (3A) above is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

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(3C) The provisions of Schedule 9 to this Act apply in the case of a draft of any such order as they apply in the case of a draft of an order to which section 91(1) above applies.”

## 69 Reports: monopoly references.

In section 83 of the <sup>M5</sup>Fair Trading Act 1973—

- (a) in subsection (1), omit “Subject to subsection (1A) below”; and
- (b) omit subsection (1A) (reports on monopoly references to be transmitted to certain persons at least twenty-four hours before laying before Parliament).

### Marginal Citations

M5 1973 c. 41.

## PART IV

### SUPPLEMENTAL AND TRANSITIONAL

## 70 Contracts as to patented products etc.

Sections 44 and 45 of the <sup>M6</sup>Patents Act 1977 shall cease to have effect.

### Marginal Citations

M6 1977 c. 37.

## 71 Regulations, orders and rules.

- (1) Any power to make regulations or orders which is conferred by this Act is exercisable by statutory instrument.
- (2) The power to make rules which is conferred by section 48 is exercisable by statutory instrument.
- (3) Any statutory instrument made under this Act may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases.
- (4) No order is to be made under—
  - (a) section 3,
  - (b) section 19,
  - (c) section 36(8),
  - <sup>[F392]</sup>(ca) section 45(8),]
  - <sup>[F393]</sup>(cb) section 47C(7),]
  - (d) section 50, or
  - (e) paragraph 6(3) of Schedule 4,

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unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

- (5) Any statutory instrument made under this Act, apart from one made—
- (a) under any of the provisions mentioned in subsection (4), or
  - (b) under section 76(3),
- shall be subject to annulment by a resolution of either House of Parliament.

#### Textual Amendments

**F392** S. 71(4)(ca) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(49); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F393** S. 71(4)(cb) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 16; S.I. 2015/1630, art. 3(j)

## 72 Offences by bodies corporate etc.

- (1) This section applies to an offence under any of sections 42 to 44, [F394 65 or 65L to 65N].
- (2) If an offence committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (4) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (5) If an offence committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on his part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsection (5) “partner” includes a person purporting to act as a partner.

#### Textual Amendments

**F394** Words in s. 72(1) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 45

## 73 Crown application.

- (1) Any provision made by or under this Act binds the Crown except that—
- (a) the Crown is not criminally liable as a result of any such provision;

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- (b) the Crown is not liable for any penalty under any such provision; and
  - (c) nothing in this Act affects Her Majesty in her private capacity.
- (2) Subsection (1)(a) does not affect the application of any provision of this Act in relation to persons in the public service of the Crown.
- (3) Subsection (1)(c) is to be interpreted as if section 38(3) of the <sup>M7</sup>Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.
- [<sup>F395</sup>(4) If an investigation is conducted under section 25 or 65D in respect of an agreement where none of the parties is the Crown or a person in the public service of the Crown, or in respect of conduct otherwise than by the Crown or such a person—
- (a) the power conferred by section 27 or (as the case may be) section 65F may not be exercised in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, without the written consent of the appropriate person; and
  - (b) none of sections 28, 28A, 65G and 65H applies in relation to land so occupied.]
- (5) In any case in which consent is required under subsection (4), the person who is the appropriate person in relation to that case is to be determined in accordance with regulations made by the Secretary of State.
- (6) Sections 62[<sup>F396</sup>, 62A] and 63 do not apply in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, unless the matter being investigated is [<sup>F397</sup>an agreement to which the Crown or a person in the service of the Crown is a party, or conduct by the Crown or such a person].
- [<sup>F398</sup>(6A) In subsections (4) and (6) “agreement” includes a suspected agreement and is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice; and “conduct” includes suspected conduct.]
- (7) [<sup>F399</sup>In subsection (6) “infringement” means an infringement of [<sup>F299</sup>EU] law relating to Article 85 or 86 of the Treaty establishing the European Community.]
- (8) If the Secretary of State certifies that it appears to him to be in the interests of national security that the powers of entry—
- (a) conferred by section 27 [<sup>F400</sup>or 65F], or
  - (b) that may be conferred by a warrant under [<sup>F401</sup>section 28, 28A, 62, 62A, 63, 65G or 65H],
- should not be exercisable in relation to premises held or used by or on behalf of the Crown and which are specified in the certificate, those powers are not exercisable in relation to those premises.
- (9) Any amendment, repeal or revocation made by this Act binds the Crown to the extent that the enactment amended, repealed or revoked binds the Crown.

#### Textual Amendments

**F299** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with arts. 3(2)(3), 4(2), 6(4)(5))

**F395** S. 73(4) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 46(2)**



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- F396** Words in s. 73(6) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 46(3)(a)**
- F397** Words in s. 73(6) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 46(3)(b)**
- F398** S. 73(6A) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 46(4)**
- F399** S. 73(7) ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 46(5)** (with reg. 6(2))
- F400** Words in s. 73(8)(a) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 46(6)(a)**
- F401** Words in s. 73(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 46(6)(b)**

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**Marginal Citations**

**M7** 1947 c. 44.

**74 Amendments, transitional provisions, savings and repeals.**

- (1) The minor and consequential amendments set out in Schedule 12 are to have effect.
- (2) The transitional provisions and savings set out in Schedule 13 are to have effect.
- (3) The enactments set out in Schedule 14 are repealed.

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**Commencement Information**

- I9** S. 74 partly in force; s. 74 not in force at Royal Assent see s. 76(3); s. 74 in force for certain purposes at 1.11.1999 by S.I. 1998/3166, art. 2, **Sch.**; s. 74(1)(3) in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; s. 74 in force for certain purposes at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**
- I10** S. 74(3) in force at 10.3.2013 in so far as not already in force by S.I. 2013/284, art. 2(b)

**75 Consequential and supplementary provision.**

- (1) The Secretary of State may by order make such incidental, consequential, transitional or supplemental provision as he thinks necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) An order under subsection (1) may, in particular, make provision—
  - (a) for enabling any person by whom any powers will become exercisable, on a date specified by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
  - (b) for making savings, or additional savings, from the effect of any repeal made by or under this Act.
- (3) Amendments made under this section shall be in addition, and without prejudice, to those made by or under any other provision of this Act.
- (4) No other provision of this Act restricts the powers conferred by this section.

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## **[<sup>F402</sup>75A Rules in relation to Part 2 and Part 2A**

- (1) The [<sup>F403</sup>CMA] may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of Parts 2 and 2A as it considers appropriate.
- (2) If the [<sup>F403</sup>CMA] is preparing rules under this section it must consult such persons as it considers appropriate.
- (3) No rule made by the [<sup>F403</sup>CMA] is to come into operation until it has been approved by an order made by the Secretary of State.
- (4) The Secretary of State may approve any rule made by the [<sup>F403</sup>CMA] —
  - (a) in the form in which it is submitted; or
  - (b) subject to such modifications as he considers appropriate.
- (5) If the Secretary of State proposes to approve a rule subject to modifications he must inform the [<sup>F403</sup>CMA] of the proposed modifications and take into account any comments made by the [<sup>F403</sup>CMA] .
- (6) Subsections (3) to (5) apply also to any alteration of the rules made by the [<sup>F403</sup>CMA] .
- (7) The Secretary of State may, after consulting the [<sup>F403</sup>CMA] , by order vary or revoke any rules made under this section.
- (8) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the [<sup>F403</sup>CMA] to exercise its powers under this section and make rules about that matter.]

### **Textual Amendments**

**F402** S. 75A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 47](#)

**F403** Words in s. 75A(1)-(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 52](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## **76 Short title, commencement and extent.**

- (1) This Act may be cited as the Competition Act 1998.
- (2) Sections 71 and 75 and this section and paragraphs 1 to 7 and 35 of Schedule 13 come into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (4) This Act extends to Northern Ireland.

### **Subordinate Legislation Made**

**P1** S. 76 power partly exercised (9.11.1998): 26.11.1998 appointed for specified provisions by [S.I. 1998/2750](#), [art. 2](#)

**P2** S. 76 power partly exercised (16.12.1998): 11.1.1999 appointed for specified provisions by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#)

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- P3** S. 76 power partly exercised (2.3.1999): 1.4.1999 appointed for specified provisions by [S.I. 1999/505](#), [art. 2](#), [Sch. 2](#)
- P4** S. 76 power partly exercised (19.10.1999): 10.11.1999 appointed for specified provisions by [S.I. 1999/2859](#), [art. 2](#)

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## SCHEDULES

### SCHEDULE 1

Sections 3(1)(a) and 19(1)(a).

#### EXCLUSIONS: MERGERS AND CONCENTRATIONS

#### PART I

#### MERGERS

##### *Enterprises ceasing to be distinct: the Chapter I prohibition*

- 1 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) results, or if carried out would result, in any two enterprises ceasing to be distinct enterprises for the purposes of [F404Part V of the M8Fair Trading Act 1973 (“the 1973 Act”)] [F404Part 3 of the Enterprise Act 2002 (“the 2002 Act”)], the Chapter I prohibition does not apply to the agreement.
- (2) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the merger provisions.
- (3) In sub-paragraph (2) “merger provisions” means the provisions of the agreement which cause, or if carried out would cause, the agreement to have the result mentioned in sub-paragraph (1).
- (4) [F405Section 65 of the 1973 Act][F405Section 26 of the 2002 Act] applies for the purposes of this paragraph as if—
- (a) in subsection (3) (circumstances in which a person or group of persons may be treated as having control of an enterprise), and
  - (b) in subsection (4) (circumstances in which a person or group of persons may be treated as bringing an enterprise under their control),
- for “may” there were substituted “ must ”.

#### Textual Amendments

**F404** Words in Sch. 1 para. 1(1) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(a\)\(i\)](#); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F405** Words in Sch. 1 para. 1(4) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(a\)\(ii\)](#); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

#### Marginal Citations

**M8** 1973 c. 41.

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*Enterprises ceasing to be distinct: the Chapter II prohibition*

- 2 (1) To the extent to which conduct (either on its own or when taken together with other conduct)—
- (a) results in any two enterprises ceasing to be distinct enterprises for the purposes of [F406Part V of the 1973 Act][F406Part 3 of the 2002 Act]), or
  - (b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),
- the Chapter II prohibition does not apply to that conduct.
- (2) [F407Section 65 of the 1973 Act][F407Section 26 of the 2002 Act] applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

**Textual Amendments**

**F406** Words in Sch. 1 para. 2(1)(a) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(50)(b)(i); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F407** Words in Sch. 1 para. 2(2) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(50)(b)(ii); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

*Transfer of a newspaper or of newspaper assets*

F408<sub>3</sub> .....

**Textual Amendments**

**F408** Sch. 1 para. 3 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Withdrawal of the paragraph 1 exclusion*

- 4 (1) The exclusion provided by paragraph 1 does not apply to a particular agreement if the [F409CMA] gives a direction under this paragraph to that effect.
- (2) If the [F409CMA] is considering whether to give a direction under this paragraph, [F410:it] may by notice in writing require any party to the agreement in question to give [F410the [F409CMA]] such information in connection with the agreement as [F410:it] may require.
- (3) The [F409CMA] may give a direction under this paragraph only as provided in sub-paragraph (4) or (5).
- (4) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (2), the [F409CMA] may give a direction under this paragraph.
- (5) The [F409CMA] may also give a direction under this paragraph if—
- [F411(a) it considers that the agreement will, if not excluded, infringe the Chapter I prohibition; and]

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- (b) the agreement is not a protected agreement.
- (6) <sup>F412</sup>For the purposes of sub-paragraph (5), an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).]
- (7) A direction under this paragraph—
  - (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

#### Textual Amendments

- F409** Words in Sch. 1 para. 4(1)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 53\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F410** Words in Sch. 1 para. 4(2) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(c\)\(ii\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F411** Sch. 1 para. 4(5)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 48\(2\)\(a\)](#)
- F412** Sch. 1 para. 4(6) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 48\(2\)\(b\)](#) (with reg. 6(2))

#### Modifications etc. (not altering text)

- C76** Sch. 1 para. 4 applied (1.3.2000) by [S.I. 2000/310, art. 7](#)

#### *Protected agreements*

- 5 An agreement is a protected agreement for the purposes of paragraph 4 if—
- <sup>F413</sup>(a) the <sup>F414</sup>CMA] or (as the case may be) the Secretary of State has published its or his decision not to make a reference <sup>F415</sup>... under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;
  - (b) the <sup>F414</sup>CMA] or (as the case may be) the Secretary of State has made a reference <sup>F415</sup>... under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and <sup>F416</sup>the CMA] has found that the agreement has given rise to, or would if carried out give rise to, a relevant merger situation or (as the case may be) a special merger situation;
  - (c) the agreement does not fall within paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 26 of the 2002 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
  - (d) the <sup>F414</sup>CMA] has made a reference <sup>F415</sup>... under section 32 of the Water Industry Act 1991 in connection with the agreement and <sup>F416</sup>the CMA] has found that the agreement has given rise to, or would if carried out give rise to, a merger of any two or more water enterprises of the kind to which that section applies.]



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### Textual Amendments

- F413** Sch. 1 para. 5(a)(d) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(50)(d)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(4)8)
- F414** Word in Sch. 1 para. 5 substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 53(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F415** Words in Sch. 1 para. 5 omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 12(2)(a)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F416** Words in Sch. 1 para. 5 substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 12(2)(b)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

### Modifications etc. (not altering text)

- C77** Sch. 1 para. 5(a)(b) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 15(1)(a)**
- C78** Sch. 1 para. 5(b) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 15(1)(b)**
- C79** Sch. 1 para. 5 modified (temp.) (7.12.2004) by The Enterprise Act 2002 (Commencement No. 7 and Transitional Provisions and Savings) Order 2004 (S.I. 2004/3233), **art. 5(2)(b)**

## PART II

### CONCENTRATIONS SUBJECT TO EC CONTROLS

- 6 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the Chapter I prohibition does not apply to the agreement if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (2) To the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the Chapter II prohibition does not apply to the conduct if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (3) In this paragraph—
- “concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation; and
- [<sup>F417</sup>“Merger Regulation” means Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings.]

### Textual Amendments

- F417** Words in Sch. 1 para. 6(3) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 1, **Sch. para. 1(2)**

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## SCHEDULE 2

Section 3(1)(b).

### EXCLUSIONS: OTHER COMPETITION SCRUTINY

#### PART I

#### FINANCIAL SERVICES

*F418* ...

#### Textual Amendments

**F418** Sch. 2 para. 1 and cross-heading repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 19](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

- 1 (1) The Financial Services Act 1986 is amended as follows.
- (2) For section 125 (effect of the <sup>M9</sup>Restrictive Trade Practices Act 1976), substitute—
- “125 The Competition Act 1998: Chapter I prohibition.**
- (1) The Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a recognised self-regulating organisation,
- (b) a recognised investment exchange, or
- (c) a recognised clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a self-regulating organisation,
- (b) an investment exchange, or
- (c) a clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (3) The exclusion provided by subsection (2) above applies only if—
- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
- (b) the application has not been determined.
- (4) The Chapter I prohibition does not apply to a decision made by—
- (a) a recognised self-regulating organisation,
- (b) a recognised investment exchange, or
- (c) a recognised clearing house,
- to the extent to which the decision relates to any of that body’s regulating provisions or specified practices.
- (5) The Chapter I prohibition does not apply to the specified practices of—

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- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
  - (b) a person who is subject to—
    - (i) the rules of one of those bodies, or
    - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.
- (6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
  - (b) a person who is subject to—
    - (i) the rules of one of those bodies, or
    - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body’s regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.
- (7) The Chapter I prohibition does not apply to—
- (a) any clearing arrangements; or
  - (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (8) If the recognition order in respect of a body of the kind mentioned in subsection (1)(a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
- “regulating provisions” means—
- (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
  - (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
  - (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;
- “specified practices” means—
- (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));

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- (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));
- (c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));
- (d) in the case of a person who is subject to the statements of principle, rules, regulations or codes of practice issued or made by a designated agency in the exercise of functions transferred to it by a delegation order, the practices mentioned in section 121(2)(c) above (read with section 121(4));

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

- (3) Omit section 126 (certain practices not to constitute anti-competitive practices for the purposes of the <sup>M10</sup>Competition Act 1980).
- (4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

**“127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter I prohibition.**

- (1) This section applies to—
  - (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
  - (b) any other agreement, the parties to which consist of or include—
    - (i) a recognised professional body,
    - (ii) a person certified by such a body, or
    - (iii) a member of such a body,
 and which contains a provision required or contemplated by that body’s investment business rules.
- (2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—
  - (a) that the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,
 the Treasury may make a declaration to that effect.
- (3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.

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- (4) If the Treasury are satisfied that there has been a material change of circumstances, they may—
  - (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or
  - (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
  - (a) notify the Treasury of his intention to do so; and
  - (b) give the Treasury particulars of the agreement and such other information—
    - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
    - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
  - (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or
  - (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,

“Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, and

expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Marginal Citations

**M9** 1976 c. 34.

**M10** 1980 c. 21.

## [<sup>F419</sup>PART II

### COMPANIES

### Textual Amendments

**F419** Sch. 2 Pt. 2 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 49\(2\)](#) (with reg. 6(2))

#### *The Companies Act 1989 (c.40)*

- 2 (1) The Companies Act 1989 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the <sup>M11</sup>Restrictive Trade Practices Act 1976), substitute—

#### *“ The Competition Act 1998*

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and
  - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
  - (b) any person mentioned in paragraph 3(5) or (6) above,
- to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
- (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
  - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,



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and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

#### Marginal Citations

M11 1976 c. 34.

*The Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))*

F420<sub>3</sub> .....]

#### Textual Amendments

F420 Sch. 2 para. 3 repealed (1.1.2005) by *Companies (Audit, Investigations and Community Enterprise) Act 2004* (c. 27), s. 65(1), **Sch. 8**; S.I. 2004/3322, art. 2(1), Sch. 1

### PART III

#### BROADCASTING

*The Broadcasting Act 1990 (c.42)*

- 4 (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 194A (which modifies the <sup>M12</sup>Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), for subsections (2) to (6), substitute—
- “(2) If, having sought the advice of the Director, it appears to the Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.
- (3) The conditions are that—
- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
- (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
- (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or

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- (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).
- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
  - (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
  - (c) make a declaration, even though he has notified the Director of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the Director of his decision.
- (7) The Director may not exercise any Chapter III powers in respect of a relevant agreement, unless—
  - (a) he has notified the Secretary of State of his intention to do so; and
  - (b) the Secretary of State—
    - (i) has notified the Director that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
    - (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) If the Director proposes to exercise any Chapter III powers in respect of a relevant agreement, he must give the Secretary of State particulars of the agreement and such other information—
  - (a) as he considers will assist the Secretary of State to decide whether to exercise his powers under this section; or
  - (b) as the Secretary of State may request.
- (9) In this section—
  - “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
  - “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;
  - “Director” means the Director General of Fair Trading;
  - “regional Channel 3 licence” has the same meaning as in Part I;
 and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.

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- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

#### Marginal Citations

M12 1976 c. 34.

#### *Networking arrangements under the Broadcasting Act 1990 (c.42)*

- 5 [F421(1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they—

- (a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or
- (b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;

nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed.]

- (2) [F422OFCOM] must publish a list of the networking arrangements which in their opinion are excluded from the Chapter I prohibition by virtue of sub-paragraph (1).

- (3) [F423OFCOM] must—

- (a) consult the [F424CMA] before publishing the list, and
- (b) publish the list in such a way as they think most suitable for bringing it to the attention of persons who, in their opinion, would be affected by, or likely to have an interest in, it.

- [F425(4) In this paragraph “networking arrangements” has the same meaning as in Part 3 of the Communications Act 2003.]

#### Textual Amendments

**F421** Sch. 2 para. 5(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 291(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

**F422** Words in Sch. 2 para. 5(2) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(6)(a)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

**F423** Words in Sch. 2 para. 5(3) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(6)(b)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

**F424** Word in Sch. 2 para. 5(3)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 54** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))

**F425** Sch. 2 para. 5(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 291(4)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)

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## [<sup>F426</sup>PART IV

### ENVIRONMENTAL PROTECTION

#### Textual Amendments

**F426** Sch. 2 Pt. 4 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 49(3)** (with reg. 6(2))

#### *Producer responsibility obligations*

- 6 (1) The <sup>M13</sup>Environment Act 1995 is amended as follows.
- (2) In section 94(1) (supplementary provisions about regulations imposing producer responsibility obligations on prescribed persons), after paragraph (o), insert—
- “(oa) the exclusion or modification of any provision of Part I of the Competition Act 1998 in relation to exemption schemes or in relation to any agreement, decision or concerted practice at least one of the parties to which is an operator of an exemption scheme;”
- (3) After section 94(6), insert—
- “(6A) Expressions used in paragraph (oa) of subsection (1) above which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”
- (4) After section 94, insert—
- “ Producer responsibility: competition matters.**
- (1) For the purposes of this section, the relevant paragraphs are paragraphs (n), (o), (oa) and (ya) of section 94(1) above.
- (2) Regulations made by virtue of any of the relevant paragraphs may include transitional provision in respect of agreements or exemption schemes—
- (a) in respect of which information has been required for the purposes of competition scrutiny under any regulation made by virtue of paragraph (ya);
- (b) which are being, or have been, considered for the purposes of competition scrutiny under any regulation made by virtue of paragraph (n) or (ya); or
- (c) in respect of which provisions of the <sup>M14</sup>Restrictive Trade Practices Acts 1976 and <sup>M15</sup>1977 have been modified or excluded in accordance with any regulation made by virtue of paragraph (o).
- (3) Subsections (2), (3), (5) to (7) and (10) of section 93 above do not apply to a statutory instrument which contains only regulations made by virtue of any of the relevant paragraphs or subsection (2) above.
- (4) Such a statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”]

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#### Marginal Citations

- M13** 1995 c. 25.  
**M14** 1976 c. 34.  
**M15** 1977 c. 19.

## SCHEDULE 3

Sections 3(1)(c) and 19(1)(b).

### GENERAL EXCLUSIONS

#### *Planning obligations*

- 1 (1) The Chapter I prohibition does not apply to an agreement—
- (a) to the extent to which it is a planning obligation;
  - (b) which is made under section 75 (agreements regulating development or use of land) or 246 (agreements relating to Crown land) of the <sup>M16</sup>Town and Country Planning (Scotland) Act 1997; or
  - (c) which is made under [<sup>F427</sup>Article 40 of the <sup>M17</sup>Planning (Northern Ireland) Order 1991][<sup>F427</sup>section 76 of the Planning Act (Northern Ireland) 2011] .
- (2) In sub-paragraph (1)(a), “planning obligation” means—
- (a) a planning obligation for the purposes of section 106 of the <sup>M18</sup>Town and Country Planning Act 1990; or
  - (b) a planning obligation for the purposes of section 299A of that Act.

#### Textual Amendments

**F427** Words in Sch. 3 para. 1(1)(c) substituted (N.I.) (13.2.2015 for specified purposes, 1.4.2015 so far as not already in force) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\)](#), [Sch. 6 para. 89](#) (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2)

#### Marginal Citations

- M16** 1997 c. 8.  
**M17** S.I. 1991/1220 (N.I. 11).  
**M18** 1990 c. 8.

#### *Section 21(2) agreements*

- 2 [<sup>F428</sup>(1) The Chapter I prohibition does not apply to an agreement in respect of which a direction under section 21(2) of the <sup>M19</sup>Restrictive Trade Practices Act 1976 is in force immediately before the coming into force of section 2 (“a section 21(2) agreement”).
- (2) If a material variation is made to a section 21(2) agreement, sub-paragraph (1) ceases to apply to the agreement on the coming into force of the variation.
- (3) Sub-paragraph (1) does not apply to a particular section 21(2) agreement if the [<sup>F429</sup>OFT] gives a direction under this paragraph to that effect.

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- (4) If the [F429OFT] is considering whether to give a direction under this paragraph, [F430it] may by notice in writing require any party to the agreement in question to give [F430the OFT] such information in connection with the agreement as [F430it] may require.
- (5) The [F429OFT] may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the [F429OFT] may give a direction under this paragraph.
- (7) The [F429OFT] may also give a direction under this paragraph [F431if it] considers—
  - (a) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
  - (b) that [F431the OFT is]not likely to grant it an unconditional individual exemption.
- (8) For the purposes of sub-paragraph (7) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (9) A direction under this paragraph—
  - (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).]

#### Textual Amendments

- F428** Sch. 3 para. 2 ceases to have effect (1.5.2007) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(b), **Sch. 1 para. 50(a)** (with reg. 6(2))
- F429** Word in Sch. 3 para. 2 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(51)(a)(i)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F430** Words in Sch. 3 para. 2(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(51)(a)(ii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F431** Words in Sch. 3 para. 2(7) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(51)(a)(iii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Marginal Citations

- M19** 1976 c. 34.

### *EEA Regulated Markets*

- 3 (1) The Chapter I prohibition does not apply to an agreement for the constitution of an EEA regulated market to the extent to which the agreement relates to any of the rules made, or guidance issued, by that market.
- (2) The Chapter I prohibition does not apply to a decision made by an EEA regulated market, to the extent to which the decision relates to any of the market's regulating provisions.



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- (3) The Chapter I prohibition does not apply to—
- (a) any practices of an EEA regulated market; or
  - (b) any practices which are trading practices in relation to an EEA regulated market.
- (4) The Chapter I prohibition does not apply to an agreement the parties to which are or include—
- (a) an EEA regulated market, or
  - (b) a person who is subject to the rules of that market,
- to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by the regulating provisions of that market.
- (5) In this paragraph—
- “EEA regulated market” is a market which—
- (a) is listed by an EEA State other than the United Kingdom pursuant to [<sup>F432</sup>[<sup>F433</sup>Article 56 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014] on markets in financial instruments]; and
  - (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which any trading facilities are provided or on any trading floor that the market may have;
- “EEA State” means a State which is a contracting party to the EEA Agreement;
- “regulating provisions”, in relation to an EEA regulated market, means—
- (a) rules made, or guidance issued, by that market,
  - (b) practices of that market, or
  - (c) practices which, in relation to that market, are trading practices;
- “trading practices”, in relation to an EEA regulated market, means practices of persons who are subject to the rules made by that market, and—
- (a) which relate to business in respect of which those persons are subject to the rules of that market, and which are required or contemplated by those rules or by guidance issued by that market; or
  - (b) which are otherwise attributable to the conduct of that market as such.

#### Textual Amendments

**F432** Words in Sch. 3 para. 3(5) substituted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), reg. 1(2), **Sch. 6 para. 13**

**F433** Words in Sch. 3 para. 3(5) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(2)(3)(4)(6), **Sch. 4 para. 5** (with reg. 7)

#### *Services of general economic interest etc.*

- 4 Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or

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having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

*Compliance with legal requirements*

- 5 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.
- (2) The Chapter II prohibition does not apply to conduct to the extent to which it is engaged in an order to comply with a legal requirement.
- (3) In this paragraph “legal requirement” means a requirement—
- (a) imposed by or under any enactment in force in the United Kingdom;
  - (b) imposed by or under the Treaty or the EEA Agreement and having legal effect in the United Kingdom without further enactment; or
  - (c) imposed by or under the law in force in another Member State and having legal effect in the United Kingdom.

*Avoidance of conflict with international obligations*

- 6 (1) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter I prohibition not to apply to—
- (a) a particular agreement, or
  - (b) any agreement of a particular description,
- he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter II prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.
- (6) An international arrangement relating to civil aviation and designated by an order made by the Secretary of State is to be treated as an international obligation for the purposes of this paragraph.
- (7) In this paragraph and paragraph 7 “specified” means specified in the order.

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### *Public policy*

- 7 (1) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition ought not to apply to—
- (a) a particular agreement, or
  - (b) any agreement of a particular description,
- he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter II prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.

### *Coal and steel*

- 8 (1) The Chapter I prohibition does not apply to an agreement which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (2) Sub-paragraph (1) ceases to have effect on the date on which the ECSC Treaty expires (“the expiry date”).
- (3) The Chapter II prohibition does not apply to conduct which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (4) Sub-paragraph (3) ceases to have effect on the expiry date.
- (5) In this paragraph—
- “coal or steel product” means any product of a kind listed in Annex I to the ECSC Treaty; and
  - “ECSC Treaty” means the Treaty establishing the European Coal and Steel Community.

### *Agricultural products*

- 9 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it relates to production of or trade in an agricultural product and—
- (a) forms an integral part of a national market organisation;
  - (b) is necessary for the attainment of the objectives set out in [F434 Article 39 of the Treaty on the Functioning of the European Union] of the Treaty; or

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- (c) is an agreement of farmers or farmers’ associations (or associations of such associations) belonging to a single member State which concerns—
- (i) the production or sale of agricultural products, or
  - (ii) the use of joint facilities for the storage, treatment or processing of agricultural products,
- and under which there is no obligation to charge identical prices.
- (2) If the Commission determines that an agreement does not fulfil the conditions specified by the provision for agricultural products for exclusion from [F435 Article 101(1)], the exclusion provided by this paragraph (“the agriculture exclusion”) is to be treated as ceasing to apply to the agreement on the date of the decision.
- (3) The agriculture exclusion does not apply to a particular agreement if the [F436 CMA] gives a direction under this paragraph to that effect.
- (4) If the [F436 CMA] is considering whether to give a direction under this paragraph, [F437 it] may by notice in writing require any party to the agreement in question to give the [F436 CMA] such information in connection with the agreement as [F437 it] may require.
- (5) The [F436 CMA] may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the [F436 CMA] may give a direction under this paragraph.
- (7) The [F436 CMA] may also give a direction under this paragraph if [F438 it] considers that an agreement (whether or not [F438 it] considers that it infringes the Chapter I prohibition) is likely, or is intended, substantially and unjustifiably to prevent, restrict or distort competition in relation to an agricultural product.
- (8) A direction under this paragraph—
- (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).
- (9) In this paragraph—
- “agricultural product” means any product of a kind listed in [F439 Annex I] to the Treaty; and
- “provision for agricultural products” means Council Regulation (EEC) No. 26/62 of 4th April 1962 applying certain rules of competition to production of and trade in agricultural products.

#### Textual Amendments

- F434** Words in Sch. 3 para. 9(1)(b) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F435** Words in Sch. 3 para. 9(2) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F436** Word in Sch. 3 para. 9(3)-(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 55(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status:* Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F437** Words in Sch. 3 para. 9(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(51)(b)(ii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F438** Words in Sch. 3 para. 9(7) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(51)(b)(iii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F439** Words in Sch. 3 para. 9(9) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 50(b)(iii)**

<sup>F440</sup>SCHEDULE 4

Section 3(1)(d).

**Textual Amendments**

- F440** Sch. 4 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 207, 279, **Sch. 26** (with Sch. 24 paras. 2022); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

<sup>F441</sup>SCHEDULE 5

Section 12(2).

NOTIFICATION UNDER CHAPTER I: PROCEDURE

**Textual Amendments**

- F441** Sch. 5 ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 51** (with reg. 6(2))

**Modifications etc. (not altering text)**

- C80** Sch. 5 applied (with modifications) (1.3.2000) by S.I. 2000/263, **art. 8**

**Commencement Information**

- I11** Sch. 5 partly in force; Sch. 5 not in force at Royal Assent, see s. 431; Sch. 5 partly in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

*Terms used*

1 In this Schedule—

“applicant” means the person making an application to which this Schedule applies;

“application” means an application under section 13 or an application under section 14;

“application for guidance” means an application under section 13;

“application for a decision” means an application under section 14;

“rules” means rules made by the <sup>F442</sup>OFT under section 51; and

“specified” means specified in the rules.

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F442** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### *General rules about applications*

- 2 (1) An application must be made in accordance with rules.
- (2) A party to an agreement who makes an application must take all reasonable steps to notify all other parties to the agreement of whom he is aware—
- (a) that the application has been made; and
  - (b) as to whether it is for guidance or a decision.
- (3) Notification under sub-paragraph (2) must be in the specified manner.

### *Preliminary investigation*

- 3 (1) If, after a preliminary investigation of an application, the [<sup>F442</sup>OFT] considers that it is likely—
- (a) that the agreement concerned will infringe the Chapter I prohibition, and
  - (b) that it would not be appropriate to grant the agreement an individual exemption,
- [<sup>F443</sup>it] may make a decision (“a provisional decision”) under this paragraph.
- (2) If the [<sup>F442</sup>OFT] makes a provisional decision—
- (a) the [<sup>F442</sup>OFT] must notify the applicant in writing of [<sup>F443</sup>its] provisional decision; and
  - (b) section 13(4) or (as the case may be) section 14(4) is to be taken as never having applied.
- (3) When making a provisional decision, the [<sup>F442</sup>OFT] must follow such procedure as may be specified.
- (4) A provisional decision does not affect the final determination of an application.
- (5) If the [<sup>F442</sup>OFT] has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 14.

### Textual Amendments

**F442** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F443** Words in Sch. 5 para. 3 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### *Procedure on application for guidance*

- 4 When determining an application for guidance, the [<sup>F442</sup>OFT] must follow such procedure as may be specified.



*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F442** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Procedure on application for a decision*

- 5 (1) When determining an application for a decision, the [<sup>F442</sup>OFT] must follow such procedure as may be specified.
- (2) The [<sup>F442</sup>OFT] must arrange for the application to be published in such a way as [<sup>F444</sup>it thinks] most suitable for [<sup>F445</sup>bringing the application] to the attention of those likely to be affected by it, unless [<sup>F446</sup>the OFT is] satisfied that it will be sufficient <sup>F447</sup>... to seek information from one or more particular persons other than the applicant.
- (3) In determining the application, the [<sup>F442</sup>OFT] must take into account any representations made to [<sup>F448</sup>it] by persons other than the applicant.

#### Textual Amendments

**F442** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F444** Words in Sch. 5 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F445** Words in Sch. 5 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F446** Words in Sch. 5 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F447** Words in Sch. 5 para. 5(2) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(iv\), Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F448** Word in Sch. 5 para. 5(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(d\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Publication of decisions*

- 6 If the [<sup>F442</sup>OFT] determines an application for a decision [<sup>F449</sup>it] must publish [<sup>F449</sup>its] decision, together with [<sup>F449</sup>its] reasons for making it, in such manner as may be specified.

#### Textual Amendments

**F442** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

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*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F449** Words in Sch. 5 para. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(e\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

PROSPECTIVE

*Delay by the [F442OFT]*

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the [F442OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the [F442OFT] in determining the application.
- (2) The court may give such directions to the [F442OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.]

[F450]SCHEDULE 6

Section 20(2).

NOTIFICATION UNDER CHAPTER II: PROCEDURE

**Textual Amendments**

**F450** Sch. 6 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 51](#) (with reg. 6(2))

*Terms used*

- 1 In this Schedule—
- “applicant” means the person making an application to which this Schedule applies;
  - “application” means an application under section 21 or an application under section 22;
  - “application for guidance” means an application under section 21;
  - “application for a decision” means an application under section 22;
  - “other party”, in relation to conduct of two or more persons, means one of those persons other than the applicant;
  - “rules” means rules made by the [F451OFT] under section 51; and
  - “specified” means specified in the rules.

**Textual Amendments**

**F451** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

*Status:* Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### *General rules about applications*

- 2 (1) An application must be made in accordance with rules.
- (2) If the conduct to which an application relates is conduct of two or more persons, the applicant must take all reasonable steps to notify all of the other parties of whom he is aware—
  - (a) that the application has been made; and
  - (b) as to whether it is for guidance or a decision.
- (3) Notification under sub-paragraph (2) must be in the specified manner.

#### **Modifications etc. (not altering text)**

**C81** Sch. 6 paras. 2-2C amended (1.3.2000) by S.I. 2000/947, art. 6

### *Preliminary investigation*

- 3 (1) If, after a preliminary investigation of an application, the [F451OFT] considers that it is likely that the conduct concerned will infringe the Chapter II prohibition, [F452it] may make a decision (“a provisional decision”) under this paragraph.
- (2) If the [F451OFT] makes a provisional decision, [F452it] must notify the applicant in writing of that decision.
- (3) When making a provisional decision, the [F451OFT] must follow such procedure as may be specified.
- (4) A provisional decision does not affect the final determination of an application.
- (5) If the [F451OFT] has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 22.

#### **Textual Amendments**

**F451** Words in Sch. 6 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(53)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F452** Word in Sch. 6 para. 3(1)(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(53)(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### *Procedure on application for guidance*

- 4 When determining an application for guidance, the [F451OFT] must follow such procedure as may be specified.

#### **Textual Amendments**

**F451** Words in Sch. 6 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(53)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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### *Procedure on application for a decision*

- 5 (1) When determining an application for a decision, the [F451OFT] must follow such procedure as may be specified.
- (2) The [F451OFT] must arrange for the application to be published in such a way as [F453it thinks] most suitable for [F454bringing the application] to the attention of those likely to be affected by it, unless [F455the OFT is] satisfied that it will be sufficient [F456... to seek information from one or more particular persons other than the applicant.
- (3) In determining the application, the [F451OFT] must take into account any representations made to [F457it] by persons other than the applicant.

#### **Textual Amendments**

- F451** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F453** Words in Sch. 6 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(c\)\(i\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F454** Words in Sch. 6 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(c\)\(ii\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F455** Words in Sch. 6 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(c\)\(iii\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F456** Words in Sch. 6 para. 5(2) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(c\)\(iv\)](#), [Sch. 26](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F457** Word in Sch. 6 para. 5(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(d\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### *Publication of decisions*

- 6 If the [F451OFT] determines an application for a decision [F458it] must publish [F458its] decision, together with [F458its] reasons for making it, in such manner as may be specified.

#### **Textual Amendments**

- F451** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F458** Words in Sch. 6 para. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(53\)\(e\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

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PROSPECTIVE

*Delay by the [F451OFT]*

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the [F451OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the [F451OFT] in determining the application.
- (2) The court may give such directions to the [F451OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.]

[F459]SCHEDULE 6A

Section 31A

COMMITMENTS

**Textual Amendments**

**F459** Sch. 6A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 52](#)

**PART 1**

PROCEDURAL REQUIREMENTS FOR THE  
ACCEPTANCE AND VARIATION OF COMMITMENTS

1. Paragraph 2 applies where the [F460CMA] proposes to—
- (a) accept any commitments under section 31A; or
  - (b) accept any variation of such commitments other than a variation which is not material in any respect.

**Textual Amendments**

**F460** Word in Sch. 6A para. 1 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

2. (1) Before accepting the commitments or variation, the [F461CMA] must—
- (a) give notice under this paragraph; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
- (a) that the [F462CMA] proposes to accept the commitments or variation;
  - (b) the purpose of the commitments or variation and the way in which the commitments or variation would meet the [F463CMA's] competition concerns;

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- (c) any other facts which the [<sup>F462</sup>CMA] considers are relevant to the acceptance or variation of the commitments; and
  - (d) the period within which representations may be made in relation to the proposed commitments or variation.
- (3) The period stated for the purposes of sub-paragraph (2)(d) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

#### Textual Amendments

**F461** Word in Sch. 6A para. 2(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(3\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F462** Word in Sch. 6A para. 2(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(3\)\(b\)\(i\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F463** Word in Sch. 6A para. 2(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(3\)\(b\)\(ii\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

3. (1) The [<sup>F464</sup>CMA] must not accept the commitments or variation of which notice has been given under paragraph 2(1) with modifications unless it—
- (a) gives notice under this paragraph of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period within which representations may be made in relation to the proposed modifications.
- (3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 6 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

#### Textual Amendments

**F464** Word in Sch. 6A para. 3(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

4. If, after giving notice under paragraph 2 or 3 the [<sup>F465</sup>CMA] decides—
- (a) not to accept the commitments or variation concerned, and
  - (b) not to proceed by virtue of paragraph 5 or 6,
- the [<sup>F465</sup>CMA] must give notice that it has so decided.

#### Textual Amendments

**F465** Word in Sch. 6A para. 4 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(5\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

5. The requirements of paragraph 3 shall not apply if the [<sup>F466</sup>CMA] —

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

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- (a) has already given notice under paragraph 2 but not under paragraph 3; and
- (b) considers that the modifications which are now being proposed are not material in any respect.

**Textual Amendments**

**F466** Word in Sch. 6A para. 5 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(6\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

6. The requirements of paragraph 3 shall not apply if the [<sup>F467</sup>CMA] —
- (a) has already given notices under paragraphs 2 and 3; and
  - (b) considers that the further modifications which are now being proposed are not material in any respect or do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 3.

**Textual Amendments**

**F467** Word in Sch. 6A para. 6 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(7\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

7. As soon as practicable after accepting commitments or a variation under section 31A the [<sup>F468</sup>CMA] must publish the commitments or the variation in such manner as the [<sup>F468</sup>CMA] considers appropriate.

**Textual Amendments**

**F468** Word in Sch. 6A para. 7 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(8\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

8. A notice under paragraph 2 or 3 shall be given by—
- (a) sending a copy of the notice to such person or persons as the [<sup>F469</sup>CMA] considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it; or
  - (b) publishing the notice in such manner as the [<sup>F469</sup>CMA] considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.

**Textual Amendments**

**F469** Word in Sch. 6A para. 8 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(9\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## PART 2

### PROCEDURAL REQUIREMENTS FOR THE RELEASE OF COMMITMENTS

10. Paragraph 11 applies where the [<sup>F470</sup>CMA] proposes to release any commitments under section 31A.



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#### Textual Amendments

**F470** Word in Sch. 6A para. 10 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(10\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

11. (1) Before releasing the commitments, the [<sup>F471</sup>CMA] must—
- (a) give notice under this paragraph;
  - (b) send a copy of the notice to the person (or persons) who gave the commitments; and
  - (c) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
- (a) the fact that a release is proposed;
  - (b) the reasons for it; and
  - (c) the period within which representations may be made in relation to the proposed release.
- (3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

#### Textual Amendments

**F471** Word in Sch. 6A para. 11(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(11\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

12. If after giving notice under paragraph 11 the [<sup>F472</sup>CMA] decides not to proceed with the release, it must—
- (a) give notice that it has so decided; and
  - (b) send a copy of the notice to the person (or persons) who gave the commitments.

#### Textual Amendments

**F472** Word in Sch. 6A para. 12 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(12\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

13. As soon as practicable after releasing the commitments, the [<sup>F473</sup>CMA] must—
- (a) publish the release in such manner as it considers appropriate; and
  - (b) send a copy of the release to the person (or persons) who gave the commitments.

#### Textual Amendments

**F473** Word in Sch. 6A para. 13 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(13\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

14. A notice under paragraph 11 or 12 shall be given by—

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- (a) sending a copy of the notice to such other person or persons as the [<sup>F474</sup>CMA] considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it; or
- (b) publishing the notice in such manner as the [<sup>F474</sup>CMA] considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.]

**Textual Amendments**

**F474** Word in Sch. 6A para. 14 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 56\(14\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

<sup>F475</sup>SCHEDULE 7

Section 45(7).

**Textual Amendments**

**F475** Sch. 7 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 222](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

<sup>F476</sup>SCHEDULE 7A

**Textual Amendments**

**F476** Sch. 7A omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 223](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

SCHEDULE 8

Sections 46(5) and 48(4).

APPEALS

**PART I**

GENERAL

*Interpretation*

<sup>F477</sup>1

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### Textual Amendments

**F477** Sch. 8 para. 1 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(2\)](#), [Sch. 26](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

### General procedure

- 2 (1) An appeal to the [<sup>F478</sup>Tribunal under section [<sup>F479</sup>46, 47 or 49D(3)]] must be made by sending a notice of appeal to it] within the specified period.
- (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—
- (a) under which provision of this Act the appeal is brought;
  - (b) to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and
  - (c) to what extent (if any) the appellant is appealing against the [<sup>F480</sup>[<sup>F481</sup>CMA's] exercise of its] discretion in making the disputed decision.
- (3) The [<sup>F482</sup>Tribunal] may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.
- [<sup>F483</sup>(4) In this paragraph references to the Tribunal are to the Tribunal as constituted (in accordance with section 14 of the Enterprise Act 2002) for the purposes of the proceedings in question.
- (5) Nothing in this paragraph restricts the power under section 15 of the Enterprise Act 2002 (Tribunal rules) to make provision as to the manner of instituting proceedings before the Tribunal.]

### Textual Amendments

**F478** Words in Sch. 8 para. 2(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(3\)\(a\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

**F479** Words in Sch. 8 para. 2(1) substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 8 para. 17\(2\)](#); [S.I. 2015/1630](#), [art. 3\(j\)](#)

**F480** Words in Sch. 8 para. 2(2)(c) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(54\)\(b\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

**F481** Word in Sch. 8 para. 2(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 57\(2\)](#) (with s. 28); [S.I. 2014/416](#), [art. 2\(1\)\(d\)](#) (with [Sch.](#))

**F482** Word in Sch. 8 para. 2(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(3\)\(b\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

**F483** Sch. 8 para. 2(4)(5) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(3\)\(c\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

### Modifications etc. (not altering text)

**C82** Sch. 8 para. 2(2) applied (1.3.2000) by [S.I. 2000/261](#), [Rule 6](#)

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### *Decisions of the tribunal*

- 3<sup>F484</sup>(A1) This paragraph applies to any appeal under section 46 or 47 other than—
- (a) an appeal under section 46 against, or with respect to, a decision of the kind specified in subsection (3)(g) or (h) of that section, and
  - (b) an appeal under section 47(1)(b) or (c).]
- (1) The <sup>F485</sup>Tribunal] must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
  - (2) The <sup>F485</sup>Tribunal] may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—
    - (a) remit the matter to the <sup>F486</sup>CMA] ,
    - (b) impose or revoke, or vary the amount of, a penalty,
    - (c) <sup>F487</sup>grant or cancel an individual exemption or vary any conditions or obligations imposed in relation to the exemption by the <sup>F486</sup>CMA] ,]
    - (d) give such directions, or take such other steps, as the <sup>F486</sup>CMA] could <sup>F488</sup>itself] have given or taken, or
    - (e) make any other decision which the <sup>F486</sup>CMA] could <sup>F488</sup>itself] have made.
  - (3) Any decision of the <sup>F485</sup>Tribunal] on an appeal has the same effect, and may be enforced in the same manner, as a decision of the <sup>F486</sup>CMA] .
  - (4) If the <sup>F485</sup>Tribunal] confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

#### **Textual Amendments**

- F484** Sch. 8 para. 3(A1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 53(2)** (with reg. 8)
- F485** Word in Sch. 8 para. 3 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(4\)](#), **Sch. 26**; [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F486** Word in Sch. 8 para. 3(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 57(3)** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)
- F487** Sch. 8 para. 3(2)(c) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 53(3)** (with regs. 6(2), 8)
- F488** Word in Sch. 8 para. 3(2)(d)(e) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(54)(c)**; [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

- <sup>F489</sup>3A(1) This paragraph applies to—
- (a) any appeal under section 46 against, or with respect to, a decision of the kind specified in subsection (3)(g) or (h) of that section, and
  - (b) any appeal under section 47(1)(b) or (c).
- (2) The Tribunal must, by reference to the grounds of appeal set out in the notice of appeal, determine the appeal by applying the same principles as would be applied by a court on an application for judicial review.
  - (3) The Tribunal may—

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- (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
- (b) where it quashes the whole or part of that decision, remit the matter back to the [<sup>F490</sup>CMA] with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.]

**Textual Amendments**

**F489** Sch. 8 para. 3A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 53(4)** (with reg. 8)

**F490** Word in Sch. 8 para. 3A(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 57(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[<sup>F491</sup>3B(1) This paragraph applies to an appeal under section 49D(3).

- (2) The Tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal may—
  - (a) approve the amount of costs which is the subject of the appeal, or
  - (b) impose a requirement to pay costs of a different amount.
- (4) The Tribunal may also give such directions, or take such other steps, as the CMA could itself have given or taken.
- (5) A requirement imposed by the Tribunal under sub-paragraph (3)(b) has the same effect, and may be enforced in the same manner, as a requirement imposed by the CMA under section 49D.]

**Textual Amendments**

**F491** Sch. 8 para. 3B inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 8 para. 17(3)**; S.I. 2015/1630, art. 3(j)

<sup>F492</sup>4 .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**PART II**

**RULES**

*Registrar of Appeal Tribunals*

<sup>F492</sup>5 .....

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**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Notice of appeal*

**F492**<sup>6</sup> .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Response to the appeal*

**F492**<sup>7</sup> .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Pre-hearing reviews and preliminary matters*

**F492**<sup>8</sup> .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Conduct of the hearing*

**F492**<sup>9</sup> .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Interest*

**F492**<sup>10</sup> .....

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**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Fees*

**F492** 11 .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Withdrawing an appeal*

**F492** 12 .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Interim orders*

**F492** 13 .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Miscellaneous*

**F492** 14 .....

**Textual Amendments**

**F492** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)



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## [<sup>F493</sup>SCHEDULE 8A

Section 47F

### FURTHER PROVISION ABOUT CLAIMS IN RESPECT OF LOSS OR DAMAGE BEFORE A COURT OR THE TRIBUNAL

#### Textual Amendments

**F493** Sch. 8A inserted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\)](#), reg. 1(2), [Sch. 1 para. 4](#) (with Sch. 1 para. 5)

## PART 1

### INTERPRETATION

1. This Part of this Schedule contains definitions and other provisions about interpretation which apply for the purposes of this Schedule.

#### *Competition law etc*

2. (1) “Competition law” means—
  - (a) the Chapter I prohibition,
  - (b) the Chapter II prohibition,
  - (c) the prohibition in Article 101(1), and
  - (d) the prohibition in Article 102.
- (2) “Competition claim” means a claim in respect of loss or damage arising from an infringement of competition law (whatever the legal basis of the claim) which is made by or on behalf of—
  - (a) the person who suffered the loss or damage, or
  - (b) a person who has acquired that person’s right to make the claim (whether by operation of law or otherwise).
- (3) “Competition damages claim” means a competition claim to the extent that it is a claim for damages.
- (4) “Competition proceedings” means proceedings before a court or the Tribunal to the extent that they relate to a competition claim.
- (5) Where the context requires, references to an infringement of competition law and to loss or damage (however expressed) include an alleged infringement and alleged loss or damage.

#### *Competition authority etc*

3. (1) “Competition authority” means—
  - (a) the CMA,
  - (b) a regulator, so far as it exercises functions under Part 1 of this Act concurrently with the CMA,
  - (c) the Commission, and
  - (d) a member State competition authority.

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- (2) A “member State competition authority” means an authority designated by a member State other than the United Kingdom, under Article 35 of the EC Competition Regulation, as being responsible for the application of Article 101 and Article 102 of the Treaty.
- (3) “Investigation materials”, in relation to a competition authority, means—
- (a) information prepared by a person (other than a competition authority) for the purpose of an investigation by the competition authority into an infringement of competition law;
  - (b) information sent by the competition authority, during the course of such an investigation, to an undertaking which is the subject of the investigation;
  - (c) a settlement submission which has been withdrawn.
- (4) Subsections (3) and (4) of section 58A apply for the purposes of determining when a decision of the CMA, a regulator or the Commission becomes “final”.
- (5) A decision of a member State competition authority becomes “final”—
- (a) when the time for appealing against it expires without an appeal having been brought, or
  - (b) where an appeal has been brought against the decision, when—
    - (i) the appeal and any further appeal in relation to the decision has been decided or has otherwise ended, and
    - (ii) the time for appealing against the result of the appeal or further appeal has expired without another appeal having been brought.
- (6) Where the law of a member State other than the United Kingdom requires or enables a member State competition authority to bring proceedings before a court of the member State in relation to an infringement of Article 101(1) or Article 102, rather than making a decision itself in relation to the infringement—
- (a) references to an investigation by a competition authority into an infringement of competition law include such proceedings brought by the member State competition authority;
  - (b) references to a competition authority closing an investigation include the termination of such proceedings by the member State competition authority or by another person, except where the competition authority’s investigation of the infringement continues after the proceedings terminate;
  - (c) references to a decision of a competition authority include a decision of a court in such proceedings;
  - (d) sub-paragraph (5) applies in relation to a decision of a court in such proceedings as it applies in relation to a decision of a member State competition authority.

### *Cartels*

4. (1) “Cartel” means an agreement or concerted practice between two or more competitors aimed at—
- (a) co-ordinating their competitive behaviour in a market, or
  - (b) otherwise influencing competition in a market,
- through practices such as (but not limited to) those listed in sub-paragraph (2).
- (2) Those practices are—

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- (a) fixing or co-ordinating purchase or selling prices or other trading conditions, including in relation to intellectual property rights,
  - (b) allocating production or sales quotas, and
  - (c) sharing markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors.
- (3) “Cartel leniency programme” means a programme operated by a competition authority under which—
- (a) an undertaking that has participated in a cartel may provide the competition authority with information about the cartel and the undertaking’s involvement in it, and
  - (b) if it does so voluntarily and independently of the other cartel members, the competition authority may give the undertaking immunity from, or a reduction in, a financial penalty which would otherwise be payable by the undertaking for its participation in the cartel.
- (4) “Cartel leniency statement” means a set of information provided, orally or in writing, to a competition authority by or on behalf of a person which—
- (a) consists of information about a cartel and the person’s role in relation to the cartel,
  - (b) is provided voluntarily, and
  - (c) is provided specifically for the purposes of the competition authority’s cartel leniency programme,
- excluding any pre-existing information.
- (5) For the purposes of sub-paragraph (4)—
- (a) “pre-existing information” means information that exists irrespective of a competition authority’s investigations, and
  - (b) the fact that information is in a competition authority’s file does not prevent it from being pre-existing information.
- (6) References to a cartel leniency statement include—
- (a) a part of a cartel leniency statement,
  - (b) a quotation from a cartel leniency statement,
  - (c) all or part of a record of a cartel leniency statement, and
  - (d) a copy of all or part of a cartel leniency statement or of a record of such a statement.
- (7) On the application of a claimant in competition proceedings, a court or the Tribunal may, in accordance with procedural rules, determine whether information is a cartel leniency statement.
- (8) For the purposes of making a determination under sub-paragraph (7), the court or the Tribunal may—
- (a) take evidence from the author of the document, and
  - (b) obtain assistance from a competition authority,
- but may not obtain assistance from anyone else.

#### *Settlement submission to a competition authority*

5. (1) “Settlement submission” means a statement made, orally or in writing, to a competition authority by or on behalf of an undertaking—

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- (a) which states—
    - (i) that the undertaking accepts that it has infringed competition law, or
    - (ii) that the undertaking does not accept that it has infringed competition law but will not dispute a decision of the competition authority that it has done so,
  - (b) which is made voluntarily, and
  - (c) which is made for the sole purpose of allowing the competition authority to follow a simplified or expedited procedure in connection with the infringement.
- (2) References to a settlement submission include—
- (a) a part of a settlement submission,
  - (b) a quotation from a settlement submission,
  - (c) all or part of a record of a settlement submission, and
  - (d) a copy of all or part of a settlement submission or of a record of such a submission.
- (3) On the application of a claimant in competition proceedings, a court or the Tribunal may, in accordance with procedural rules, determine whether a document is a settlement submission.
- (4) For the purposes of making a determination under sub-paragraph (3), the court or the Tribunal may—
- (a) take evidence from the author of the document, and
  - (b) obtain assistance from a competition authority,
- but may not obtain assistance from anyone else.

#### *Consensual dispute resolution process*

6. (1) “Consensual dispute resolution process” means arbitration, mediation or any other process enabling parties to a dispute to resolve it out of court.
- (2) A dispute is resolved “out of court” even if the process involves a court or the Tribunal approving what the parties agree or declaring their agreement binding.

#### *Other definitions*

7. (1) “Court” means—
- (a) the High Court or the Court of Appeal in England and Wales,
  - (b) the sheriff or the Court of Session,
  - (c) the High Court or the Court of Appeal in Northern Ireland, or
  - (d) the Supreme Court,
- except in paragraphs 3(6) and 35.
- (2) “Damages” includes any sum of money (other than costs or expenses) which may be awarded in respect of a competition claim.
- (3) “Procedural rules” means—
- (a) in relation to proceedings before a court, rules of court, and
  - (b) in relation to proceedings before the Tribunal, Tribunal rules.
- (4) “Undertaking” includes an association of undertakings.

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## PART 2

### PASSING ON

#### *Overcharges and underpayments*

8. For the purposes of this Part of this Schedule—
- (a) there is an overcharge as a result of an infringement of competition law if, when a product or service is acquired directly from the infringer, the price actually paid exceeds the price that would have been paid in the absence of the infringement, and
  - (b) there is an underpayment as a result of an infringement of competition law if, when a product or service is provided directly to the infringer, the price actually paid is less than the amount that would have been paid in the absence of the infringement.

#### *Burden of proof where an overcharge is passed on to an indirect purchaser*

9. (1) Sub-paragraph (2) applies where—
- (a) there is an overcharge as a result of an infringement of competition law, and
  - (b) a competition claim is made in respect of loss or damage which—
    - (i) arises, directly or indirectly, from the overcharge, and
    - (ii) was suffered by a person who acquired a product or service indirectly from the infringer (“the injured person”).
- (2) The claimant is to be treated as having proved that the overcharge was passed on to the claimant if the claimant proves that—
- (a) the defendant infringed competition law,
  - (b) as a result of the infringement, there was an overcharge when a person acquired a product or service directly from the defendant, and
  - (c) the claimant subsequently acquired—
    - (i) the product or service mentioned in paragraph (b), or
    - (ii) a product or service derived from or containing the product or service mentioned in paragraph (b).
- (3) Sub-paragraph (2) does not apply if the defendant proves that the overcharge, or part of it, was not passed on to the claimant.
- (4) Where the claimant is not the injured person, the following are to be read as references to the injured person—
- (a) the second reference to the claimant in the opening words of sub-paragraph (2), and
  - (b) the references to the claimant in sub-paragraphs (2)(c) and (3).
- (5) Where the defendant is not the infringer, the references in sub-paragraph (2)(a) and (b) to the defendant are to be read as references to the infringer.

#### *Burden of proof where an underpayment is passed on to an indirect provider*

10. (1) Sub-paragraph (2) applies where—
- (a) there is an underpayment as a result of an infringement of competition law, and

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- (b) a competition claim is made in respect of loss or damage which—
  - (i) arises, directly or indirectly, from the underpayment, and
  - (ii) was suffered by a person who provided a product or service indirectly to the infringer (“the injured person”).
- (2) The claimant is to be treated as having proved that the underpayment was passed on to the claimant if the claimant proves that—
  - (a) the defendant infringed competition law,
  - (b) as a result of the infringement, there was an underpayment when a person provided a product or service directly to the defendant, and
  - (c) the product or service mentioned in paragraph (b)—
    - (i) was provided to the person by the claimant, or
    - (ii) contained or was derived from a product or service provided by the claimant.
- (3) Sub-paragraph (2) does not apply if the defendant proves that the underpayment, or part of it, was not passed on to the claimant.
- (4) Where the claimant is not the injured person, the following are to be read as references to the injured person—
  - (a) the second reference to the claimant in the opening words of sub-paragraph (2), and
  - (b) the references to the claimant in sub-paragraphs (2)(c) and (3).
- (5) Where the defendant is not the infringer, the references in sub-paragraph (2)(a) and (b) to the defendant are to be read as references to the infringer.

*Burden of proof where an overcharge or underpayment is passed on by the claimant*

- 11. (1) This paragraph applies where—
  - (a) there is an overcharge or underpayment as a result of an infringement of competition law,
  - (b) a person makes a competition claim in respect of loss or damage which arises, directly or indirectly, from the overcharge or underpayment, and
  - (c) in its defence, the defendant claims that the claimant passed on all or part of the overcharge or underpayment to another person.
- (2) The defendant has the burden of proving—
  - (a) that the claimant passed on the overcharge or underpayment, and
  - (b) the extent to which the claimant did so.
- (3) Where the competition claim is made by someone other than the person who suffered the loss or damage (“the injured person”), the references in sub-paragraphs (1)(c) and (2) to the claimant are to be read as references to the injured person.

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### PART 3

#### SMALL AND MEDIUM-SIZED ENTERPRISES

##### *Liability of small and medium-sized enterprises*

12. (1) Sub-paragraph (3) applies where—
- (a) an undertaking participated in an infringement of competition law with one or more other undertakings,
  - (b) throughout the period of the infringement, the undertaking's share of the relevant market (or, if there was more than one, each relevant market) was less than 5%,
  - (c) but for this paragraph, the undertaking's liability to pay damages in respect of the infringement (whatever the legal basis of the liability) would irretrievably jeopardise its economic viability and cause its assets to lose all their value, and
  - (d) the undertaking is a small or medium-sized enterprise.
- (2) Sub-paragraph (3) does not apply where—
- (a) the undertaking led the infringement,
  - (b) the undertaking coerced one or more of the other undertakings to participate in the infringement, or
  - (c) the undertaking has previously been found to have infringed competition law.
- (3) The undertaking is not liable (either alone or jointly) to pay damages in respect of loss or damage suffered by a person as a result of the infringement of competition law (whatever the legal basis of the liability) except where—
- (a) the person acquired a product or service that was the object of the infringement directly or indirectly from the undertaking, or
  - (b) the person acquired a product or service containing or derived from a product or service that was the object of the infringement indirectly from the undertaking.
- (4) The reference in sub-paragraph (1)(c) to the effect of the undertaking's liability to pay damages is to its effect taking account of the undertaking's other liabilities.
- (5) In this paragraph "small or medium-sized enterprise" means a small or medium-sized enterprise as defined in the Annex to Commission Recommendation (EC) No. 2003/361 of 6 May 2003.

### PART 4

#### CARTELS

##### *Presumption that cartels cause harm*

13. For the purposes of competition proceedings, it is to be presumed, unless the contrary is proved, that a cartel causes loss or damage.



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### *Immunity recipients*

14. (1) Paragraphs 15 and 16 apply where—
- (a) undertakings have infringed the Chapter I prohibition or the prohibition in Article 101(1) by participating in a cartel, and
  - (b) in respect of its participation in the infringement (the “cartel infringement”), an undertaking has been granted immunity from financial penalties under a cartel leniency programme.
- (2) The undertaking mentioned in sub-paragraph (1)(b) is referred to in paragraphs 15 and 16 as “an immunity recipient”.

### *Liability of immunity recipients*

15. An immunity recipient is not liable (either alone or jointly) to pay damages in respect of loss or damage suffered by a person as a result of the cartel infringement (whatever the legal basis of the liability) except where—
- (a) the person acquired a product or service that was the object of the cartel infringement directly or indirectly from the immunity recipient,
  - (b) the person acquired a product or service containing or derived from a product or service that was the object of the cartel infringement indirectly from the immunity recipient,
  - (c) the person provided a product or service that was the object of the cartel infringement directly or indirectly to the immunity recipient,
  - (d) a product or service that was the object of the cartel infringement contained or was derived from a product or service provided by the person, or
  - (e) the person is unable to obtain full compensation for the loss or damage from other undertakings involved in the cartel infringement.

### *Contribution between participants in cartels*

16. (1) Sub-paragraph (2) applies in relation to proceedings to recover contribution under section 1 of the Civil Liability (Contribution) Act 1978 or section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 where contribution is to be recovered—
- (a) in respect of loss or damage suffered by a person as a result of a cartel infringement, and
  - (b) from a person who is an immunity recipient in relation to the cartel infringement.
- (2) The amount of contribution that the immunity recipient may be required to pay may not exceed the amount of the loss or damage the immunity recipient caused to—
- (a) persons who acquired products or services that were the object of the cartel infringement directly or indirectly from the immunity recipient,
  - (b) persons who acquired products or services containing or derived from products or services that were the object of the cartel infringement indirectly from the immunity recipient,
  - (c) persons who provided products or services that were the object of the cartel infringement directly or indirectly to the immunity recipient, and
  - (d) persons who provided—
    - (i) products or services that were subsequently contained in products or services that were the object of the cartel infringement, or

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(ii) products or services from which products or services that were the object of the cartel infringement were subsequently derived.

- (3) The following have effect subject to sub-paragraph (2)—
- (a) section 2(1) of the Civil Liability (Contribution) Act 1978 (assessment of contribution);
  - (b) section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (contribution among joint wrongdoers).

## PART 5

### LIMITATION AND PRESCRIPTIVE PERIODS

#### *Time limits for bringing competition proceedings*

17. (1) Under the law of England and Wales and the law of Northern Ireland, proceedings in respect of a competition claim may not be brought before a court or the Tribunal after the end of the limitation period for the claim determined in accordance with this Part of this Schedule.
- (2) Under the law of Scotland—
- (a) proceedings in respect of a competition claim may not be brought before a court or the Tribunal after the end of the prescriptive period for the claim determined in accordance with this Part of this Schedule, and
  - (b) accordingly, an obligation in respect of the loss or damage that is the subject of the claim is extinguished,
- except where the subsistence of the obligation in relation to which the claim is made was relevantly acknowledged before the end of that period.
- (3) Section 6 of the Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of 5 years) does not apply in relation to an obligation described in sub-paragraph (2).
- (4) The following provisions of the Prescription and Limitation (Scotland) Act 1973 apply for the purposes of, or in relation to, sub-paragraph (2) as they apply for the purposes of, or in relation to, section 6 of that Act—
- (a) section 10 (relevant acknowledgment);
  - (b) section 13 (prohibition of contracting out);
  - (c) section 14(1)(c) and (d) (computation of prescriptive periods).

#### *Length of limitation or prescriptive period*

18. (1) The limitation period is 6 years.
- (2) The prescriptive period is 5 years.
- (3) But see—
- (a) the provision in paragraphs 20 to 25 for the running of the period to be suspended in certain circumstances, and
  - (b) paragraph 23(5), which extends the period in certain circumstances.

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*Beginning of limitation or prescriptive period*

19. (1) The limitation or prescriptive period for a competition claim against an infringer begins with the later of—
- (a) the day on which the infringement of competition law that is the subject of the claim ceases, and
  - (b) the claimant’s day of knowledge.
- (2) “The claimant’s day of knowledge” is the day on which the claimant first knows or could reasonably be expected to know—
- (a) of the infringer’s behaviour,
  - (b) that the behaviour constitutes an infringement of competition law,
  - (c) that the claimant has suffered loss or damage arising from that infringement, and
  - (d) the identity of the infringer.
- (3) Where the claimant has acquired the right to make the competition claim from another person (whether by operation of law or otherwise) —
- (a) the reference in sub-paragraph (2) to the day on which the claimant first knows or could reasonably be expected to know something is to be read as a reference to the first day on which either the claimant or a person in whom the cause of action was previously vested first knows or could reasonably be expected to know it, and
  - (b) the reference to the claimant in sub-paragraph (2)(c) is to be read as a reference to the injured person.
- (4) In sub-paragraph (3), “injured person”, in relation to a competition claim, means a person who suffered the loss or damage that is the subject of the claim.
- (5) Where a person (“P”) has acquired an infringer’s liability in respect of an infringement of competition law from another person (whether by operation of law or otherwise)—
- (a) the reference to an infringer in sub-paragraph (1) is to be read as a reference to P, but
  - (b) the references to the infringer in sub-paragraph (2) are to be read as references to the original infringer.
- (6) The references in sub-paragraphs (2) and (3) to a person knowing something are to a person having sufficient knowledge of it to bring competition proceedings.
- (7) This paragraph has effect subject to the provision in paragraphs 20 to 25, which defers the beginning of the limitation or prescriptive period in certain circumstances.

*Effect of disability on beginning of limitation period: England and Wales and Northern Ireland*

20. (1) This paragraph applies if the claimant in relation to a competition claim is under a disability on the day on which, but for this paragraph, the limitation period for the claim would begin.
- (2) In England and Wales and Northern Ireland, the limitation period for the claim begins with the earlier of—
- (a) the day on which the claimant ceases to be under a disability, and
  - (b) the day on which the claimant dies.

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- (3) Where—
- (a) the claimant has acquired the right to make the competition claim from another person (whether by operation of law or otherwise), and
  - (b) but for this paragraph, the limitation period would begin on the day specified in paragraph 19(2),
- the references to the claimant in sub-paragraphs (1) and (2) of this paragraph are to be read as references to the person by reference to whose knowledge that day would fall to be determined in accordance with paragraph 19(3).
- (4) In England and Wales, references in this paragraph to a person being “under a disability” have the same meaning as in the Limitation Act 1980 (see section 38(2) of that Act).
- (5) In Northern Ireland, references in this paragraph to a person being “under a disability” have the same meaning as in the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (see article 47 of that Order).

#### *Suspension during investigation by competition authority*

21. (1) Where a competition authority investigates an infringement of competition law, the period of the investigation is not to be counted when calculating whether the limitation or prescriptive period for a competition claim in respect of loss or damage arising from the infringement has expired.
- (2) The period of an investigation by a competition authority begins when the competition authority takes the first formal step in the investigation.
- (3) The period of an investigation by a competition authority ends—
- (a) if the competition authority makes a decision in relation to the infringement as a result of the investigation, at the end of the period of one year beginning with the day on which the decision becomes final, and
  - (b) otherwise, at the end of the period of one year beginning with the day on which the competition authority closes the investigation.

#### *Suspension during consensual dispute resolution process*

22. (1) This paragraph applies where—
- (a) a dispute arising from an infringement of competition law is the subject of a consensual dispute resolution process,
  - (b) a competition claim is made which arises from the dispute, and
  - (c) the claimant and the defendant participated in the consensual dispute resolution process.
- (2) The period of the consensual dispute resolution process is not to be counted when calculating whether the limitation or prescriptive period for the claim expired.
- (3) The period of a consensual dispute resolution process in relation to a dispute begins with the first day on which either of the following occurs—
- (a) the claimant and the defendant (with or without others) enter into an agreement to engage in the process in respect of the dispute, or
  - (b) the claimant and the defendant submit the dispute to the person who is to run the process.

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- (4) The period of a consensual dispute resolution process ends with the first day on which one of the following occurs —
- (a) the claimant and the defendant reach an agreement to resolve the dispute;
  - (b) where the process is the subject of an agreement or rules, the process comes to an end in accordance with the agreement or rules;
  - (c) the claimant or defendant notifies the other that it has withdrawn from the process;
  - (d) the claimant or the defendant asks the other to confirm that it wishes to continue with the process and does not receive a response within the period of 14 days beginning with the day on which the request is made;
  - (e) the claimant and the defendant are notified that the person to whom they submitted the dispute refuses to deal with it;
  - (f) the claimant and defendant are notified that the person running the process cannot continue to act in relation to the dispute and fail to agree to submit the dispute to another person within the period of 14 days beginning with the day on which they are notified.
- (5) Where the competition claim is made in collective proceedings, the references to the claimant in sub-paragraphs (1)(c), (3) and (4) are to be read as references to the claimant or the representative.
- (6) Where the claimant has acquired the right to make the competition claim from another person (whether by operation of law or otherwise), the references to the claimant in sub-paragraphs (1)(c), (3), (4) and (5) are to be read as references to the claimant or a person in whom the cause of action was previously vested.
- (7) Where the defendant has acquired the infringer’s liability in respect of the infringement of competition law from another person (whether by operation of law or otherwise), the references to the defendant in sub-paragraphs (1)(c), (3) and (4) are to be read as references to the defendant or a person who has previously held the liability.

#### *Suspension during collective proceedings*

23. (1) Where a competition claim is made in collective proceedings at the commencement of those proceedings (“the section 47B claim”), this paragraph applies for the purpose of determining the limitation or prescriptive period for the claim if it is subsequently made in proceedings under section 47A.
- (2) The period of the collective proceedings is not to be counted when calculating whether the limitation or prescriptive period has expired.
- (3) The period of collective proceedings begins with the day on which the collective proceedings are commenced.
- (4) The period of collective proceedings ends with the first day on which one of the following occurs—
- (a) the Tribunal declines to make a collective proceedings order in respect of the collective proceedings;
  - (b) the Tribunal makes a collective proceedings order in respect of the proceedings, but the order does not provide that the section 47B claim is eligible for inclusion in the proceedings;
  - (c) the Tribunal rejects the section 47B claim;

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- (d) in the case of opt-in collective proceedings, the period within which a person may choose to have the section 47B claim included in the proceedings expires without the person having done so;
  - (e) in the case of opt-out collective proceedings—
    - (i) a person domiciled in the United Kingdom chooses (within the period in which such a choice may be made) to have the section 47B claim excluded from the collective proceedings, or
    - (ii) the period within which a person not domiciled in the United Kingdom may choose to have the section 47B claim included in the collective proceedings expires without the person having done so;
  - (f) the section 47B claim is withdrawn;
  - (g) the Tribunal revokes the collective proceedings order in respect of the collective proceedings;
  - (h) the Tribunal varies the collective proceedings order in such a way that the section 47B claim is no longer included in the collective proceedings;
  - (i) the section 47B claim is settled with or without the Tribunal’s approval;
  - (j) the section 47B claim is dismissed, discontinued or otherwise disposed of without an adjudication on the merits.
- (5) Where—
- (a) there is a period of collective proceedings in relation to a competition claim, and
  - (b) but for this sub-paragraph, the limitation or prescriptive period would expire before the end of the period of 6 months beginning with the day after the day on which the period of collective proceedings ends,
- the limitation or prescriptive period for the claim is to be treated as expiring at the end of that 6 month period.

*Suspension of prescriptive period during period of disability: Scotland*

24. (1) This paragraph applies if the injured person in relation to a competition claim is under legal disability for a period at any time.
- (2) In Scotland, the period during which the injured person is under legal disability is not to be counted when calculating whether the prescriptive period for the claim has expired.
- (3) References in this paragraph to a person being “under legal disability” have the same meaning as in the Prescription and Limitation (Scotland) Act 1973 (see section 15(1) of that Act).
- (4) In this paragraph, “injured person”, in relation to a competition claim, means a person who suffered the loss or damages that is the subject of the claim.

*Continuity of limitation or prescriptive period*

25. For the purposes of calculating whether the limitation or prescriptive period for a competition claim has expired, a period described in paragraph 21, 22, 23 or 24 is not to be regarded as separating the time immediately before it from the time immediately after it.

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*New claims in pending actions: England and Wales and Northern Ireland*

26. (1) In section 35 of the Limitation Act 1980 (new claims in pending actions)—
- (a) subsection (1) applies for the purposes of this Part of this Schedule as it applies for the purposes of that Act, and
  - (b) subsections (3) to (8) apply in relation to a competition claim that is a new claim and to competition proceedings as they apply in relation to other new claims and proceedings.
- (2) In Article 73 of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (new claims in pending actions)—
- (a) paragraph (1) applies for the purposes of this Part of this Schedule as it applies for the purposes of that Order, and
  - (b) paragraphs (2) to (7) apply in relation to a competition claim that is a new claim and to competition proceedings as they apply in relation to other new claims and proceedings.

## PART 6

### DISCLOSURE ETC

*Disclosure orders*

27. (1) For the purposes of this Part of this Schedule (and subject to sub-paragraph (2)), a court or the Tribunal makes a disclosure order in respect of something if—
- (a) in England and Wales or Northern Ireland, it orders its disclosure or production in accordance with procedural rules, or
  - (b) in Scotland, it grants commission and diligence for its recovery or makes an order in respect of it under section 1 of the Administration of Justice (Scotland) Act 1972 (inspection of documents etc).
- (2) A court or the Tribunal does not make a disclosure order in respect of something if it does something described in sub-paragraph (1) for the purposes of enabling a court or the Tribunal to determine whether it is a cartel leniency statement or a settlement submission.

*Restriction in relation to settlement submissions and cartel leniency statements*

28. For the purposes of competition proceedings, a court or the Tribunal must not make a disclosure order in respect of—
- (a) a settlement submission which has not been withdrawn, or
  - (b) a cartel leniency statement (whether or not it has been withdrawn).

*Restriction in relation to investigation materials*

29. For the purposes of competition proceedings, a court or the Tribunal must not make a disclosure order in respect of a competition authority's investigation materials before the day on which the competition authority closes the investigation to which those materials relate.



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*Restriction in relation to material in a competition authority's file*

30. (1) For the purposes of competition proceedings, a court or the Tribunal must not make a disclosure order addressed to a competition authority in respect of documents or information included in a competition authority's file.
- (2) Sub-paragraph (1) does not apply where the court or the Tribunal making the order is satisfied that no-one else is reasonably able to provide the documents or information.

*Power of High Court in Northern Ireland to order disclosure etc by non-parties*

31. (1) On the application of a party to competition proceedings, where it appears to the High Court in Northern Ireland that evidence relevant to the proceedings is likely to be in the possession, custody or power of a person who is not a party to the proceedings, the court may order the person—
- (a) to disclose whether such evidence is in the person's possession, custody or power, and
  - (b) if it is, to produce it—
    - (i) to the applicant, or
    - (ii) on such conditions as may be specified in the order, to the applicant's legal adviser or other professional adviser.
- (2) An order under sub-paragraph (1) must not be made if the court considers that compliance with it would be likely to be injurious to the public interest.
- (3) Rules of court may make provision specifying circumstances in which a court may or may not make an order under sub-paragraph (1).
- (4) The power under sub-paragraph (3) includes power to make incidental, supplementary and consequential provision.
- (5) Sub-paragraph (1) is without prejudice to the exercise by the High Court in Northern Ireland of any power to make orders which is exercisable apart from this paragraph.

## PART 7

### USE OF EVIDENCE

*Cartel leniency statements and settlement submissions*

32. (1) A settlement submission which has not been withdrawn is not admissible in evidence in competition proceedings.
- (2) A cartel leniency statement is not admissible in evidence in competition proceedings (whether or not it has been withdrawn).
- (3) The prohibitions in sub-paragraphs (1) and (2) do not apply if a party to the proceedings obtained the submission or statement—
- (a) lawfully, and
  - (b) otherwise than from a competition authority's file.

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### *Investigation materials*

33. (1) A competition authority’s investigation materials are not admissible in evidence in competition proceedings at any time before the competition authority has closed the investigation to which those materials relate.
- (2) The prohibition in sub-paragraph (1) does not apply if a party to the proceedings obtained the materials—
- (a) lawfully, and
  - (b) otherwise than from a competition authority’s file.

### *Material obtained from a competition authority’s file*

34. Documents or information obtained by a person (“P”) from a competition authority’s file are admissible in evidence in competition proceedings only where—
- (a) the proceedings relate, entirely or partly, to a competition claim made by P or by a person who has acquired P’s right to make the claim (whether by operation of law or otherwise), and
  - (b) none of the prohibitions in paragraphs 32 and 33 applies.

### *Decisions of member State competition authorities*

35. (1) For the purposes of competition proceedings, a final decision of a member State competition authority or review court that there has been an infringement of Article 101(1) or Article 102 by an undertaking is prima facie evidence of the infringement.
- (2) “Review court” means a court of a member State other than the United Kingdom which—
- (a) hears appeals in connection with a decision of a competition authority of the member State that there has been an infringement of Article 101(1) or Article 102, or
  - (b) reviews judgments made by another court of the member State in connection with such decisions,
- and paragraph 3(5) (when a decision becomes final) applies in relation to a decision of a review court as it applies in relation to a decision of a member State competition authority.

## **PART 8**

### EXEMPLARY DAMAGES

#### *Exemplary damages*

36. A court or the Tribunal may not award exemplary damages in competition proceedings.

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## PART 9

### CONTRIBUTION AND CONSENSUAL SETTLEMENTS

#### *Consensual settlement*

37. In this Part of this Schedule, “consensual settlement” means an agreement relating to a dispute about loss or damage arising from an infringement of competition law which—
- (a) is reached through a consensual dispute resolution process,
  - (b) is made between—
    - (i) an infringer or a person who has acquired an infringer’s liability in respect of the infringement (whether by operation of law or otherwise) (“the settling infringer”), and
    - (ii) a person who suffered the loss or damage or a person who has acquired such a person’s right to make a claim in respect of the loss or damage (whether by operation of law or otherwise) (“the settling complainant”), and
  - (c) entirely resolves the dispute between the settling infringer and the settling complainant.

#### *Assessment of contribution*

38. (1) This paragraph applies in relation to proceedings to recover contribution under section 1 of the Civil Liability (Contribution) Act 1978 or section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 where contribution is to be recovered in respect of loss or damage suffered by a person as a result of an infringement of competition law.
- (2) The amount of contribution that one person liable in respect of the loss or damage may recover from another must be determined in the light of their relative responsibility for the whole of the loss or damage caused by the infringement.
- (3) The determination of that amount must take into account any damages paid by the other person in respect of the loss or damage in accordance with a consensual settlement.
- (4) The following have effect subject to this paragraph—
- (a) section 2(1) of the Civil Liability (Contribution) Act 1978 (assessment of contribution);
  - (b) section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 (contribution among joint wrongdoers).

#### *Effect of consensual settlement on the amount of a claim*

39. (1) Where loss or damage arising from an infringement of competition law is the subject of—
- (a) a consensual settlement, and
  - (b) a competition damages claim by the settling complainant,
- the amount of the settling complainant’s claim is reduced by the settling infringer’s share of the loss or damage.

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(2) Sub-paragraph (1) has effect regardless of the terms of the consensual settlement.

*Effect of consensual settlement for the settling infringer*

40. (1) Where loss or damage arising from an infringement of competition law is the subject of a consensual settlement, the settling complainant ceases to have a right of action against the settling infringer in respect of the loss or damage.
- (2) Sub-paragraph (1) has effect regardless of the terms of the consensual settlement.
- (3) Sub-paragraphs (1) and (2) do not apply where—
- (a) an undertaking other than the settling infringer is liable to pay damages to the settling complainant in respect of loss or damage which arises from the infringement,
  - (b) that undertaking is (or, if there is more than one, those undertakings are) unable to pay damages corresponding to the outstanding amount of the settling complainant's claim, and
  - (c) the settling infringer's liability for that amount is not expressly excluded by the terms of the consensual settlement.

*Effect of consensual settlement on contribution between defendants*

41. (1) Where—
- (a) loss or damage arising from an infringement of competition law is the subject of a consensual settlement,
  - (b) it is also the subject of a competition damages claim by the settling complainant, and
  - (c) an undertaking other than the settling infringer is liable to pay damages to the settling complainant in respect of the loss or damage that is the subject of the claim,
- that undertaking may not recover contribution from the settling infringer in respect of the loss or damage under section 1 of the Civil Liability (Contribution) Act 1978 or section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.
- (2) Sub-paragraph (1) has effect regardless of the terms of the consensual settlement.
- (3) The following have effect subject to this paragraph—
- (a) section 1 of the Civil Liability (Contribution) Act 1978;
  - (b) section 3(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940.

## PART 10

### APPLICATION

42. (1) Parts 2 to 5, 8 and 9 of this Schedule apply in relation to competition claims, competition proceedings, claims for contribution arising from competition claims and proceedings relating to such claims only to the extent that the claims and proceedings relate to loss or damage suffered on or after the relevant day as a result of an infringement of competition law that takes place on or after that day.

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- (2) Where an infringement of competition law takes place over a period of 2 or more days it is to be taken for the purposes of sub-paragraph (1) to have taken place on the first of those days
43. The following provisions of this Schedule apply only in relation to proceedings on a competition claim in relation to which the first proceedings before a court or the Tribunal began on or after the relevant day—
- (a) paragraphs 4(7) and (8) and 5(3) and (4);
  - (b) Parts 6 and 7.
44. In this Part of this Schedule “the relevant day” means the day on which the Claims in respect of Loss or Damage arising from Competition Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017 come into force.]

## SCHEDULE 9

Section 51(2).

### [<sup>F494</sup>CMA'S] RULES

#### Textual Amendments

- F494** Word in Sch. 9 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 58\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### General

- [<sup>F495</sup>1 In this Schedule “rules” means rules made by the [<sup>F496</sup>CMA] under section 51.]

#### Textual Amendments

- F495** Sch. 9 para. 1 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 54\(2\)](#)
- F496** Word in Sch. 9 para. 1 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 58\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F497</sup>Delegation of functions

#### Textual Amendments

- F497** Sch. 9 para. 1A and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 42\(4\)](#), 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

- 1A (1) Rules may provide for the exercise of a function of the CMA under this Part on its behalf—
- (a) by one or more members of the CMA Board (see Part 2 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013);
  - (b) by one or more members of the CMA panel (see Part 3 of that Schedule to that Act);

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- (c) by one or more members of staff of the CMA;
- (d) jointly by one or more of the persons mentioned in paragraph (a), (b) or (c).

(2) Sub-paragraph (1) does not apply in relation to any function prescribed in regulations made under section 7(1) of the Civil Aviation Act 1982 (power for Secretary of State to prescribe certain functions of the Civil Aviation Authority which must not be performed on its behalf by any other person).]

### *Applications*

- 2 [F498] Rules may make provision—
- (a) as to the form and manner in which an application for guidance or an application for a decision must be made;
  - (b) for the procedure to be followed in dealing with the application;
  - (c) for the application to be dealt with in accordance with a timetable;
  - (d) as to the documents and information which must be given to the [F499]OFT] in connection with the application;
  - (e) requiring the applicant to give such notice of the application, to such other persons, as may be specified;
  - (f) as to the consequences of a failure to comply with any rule made by virtue of sub-paragraph (e);
  - (g) as to the procedure to be followed when the application is subject to the concurrent jurisdiction of the [F499]OFT] and a regulator.]

#### **Textual Amendments**

**F498** Sch. 9 para. 2 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 54(3)** (with reg. 6(2))

**F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(55)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### *Provisional decisions*

- 3 [F500] Rules may make provision as to the procedure to be followed by the [F499]OFT] when making a provisional decision under paragraph 3 of Schedule 5 or paragraph 3 of Schedule 6.]

#### **Textual Amendments**

**F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(55)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F500** Sch. 9 para. 3 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 54(3)** (with reg. 6(2))

### *Guidance*

- 4 [F501] Rules may make provision as to—

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- (a) the form and manner in which guidance is to be given;
- (b) the procedure to be followed if—
  - (i) the [F499OFT] takes further action with respect to an agreement after giving guidance that it is not likely to infringe the Chapter I prohibition; or
  - (ii) the [F499OFT] takes further action with respect to conduct after giving guidance that it is not likely to infringe the Chapter II prohibition.]

#### Textual Amendments

**F499** Words in Sch. 9 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(55); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F501** Sch. 9 para. 4 ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 54(3) (with reg. 6(2))

#### Decisions

- 5 (1) Rules may make provision as to—
- (a) the form and manner in which notice of any decision is to be given;
  - (b) the person or persons to whom the notice is to be given;
  - (c) the manner in which the [F502CMA] is to publish a decision;
  - [F503](d) the procedure to be followed if—
    - (i) the [F502CMA] takes further action with respect to an agreement after having decided that it does not infringe the Chapter I prohibition;
    - (ii) the [F502CMA] takes further action with respect to an agreement after having decided that it does not infringe the prohibition in [F504 Article 101(1)];
    - (iii) the [F502CMA] takes further action with respect to conduct after having decided that it does not infringe the Chapter II prohibition; or
    - (iv) the [F502CMA] takes further action with respect to conduct after having decided that it does not infringe the prohibition in [F505 Article 102].

[F506](2) In this paragraph “decision” means a decision of the [F502CMA] —

- (a) as to whether or not an agreement has infringed the Chapter I prohibition;
- (b) as to whether or not an agreement has infringed the prohibition in [F507 Article 101(1)];
- (c) as to whether or not conduct has infringed the Chapter II prohibition; or
- (d) as to whether or not conduct has infringed the prohibition in [F508 Article 102].

#### Textual Amendments

**F502** Word in Sch. 9 para. 5(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 58(4) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)



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- F503** Sch. 9 para. 5(1)(d) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 54(4)**
- F504** Words in Sch. 9 para. 5(1)(d)(ii) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F505** Words in Sch. 9 para. 5(1)(d)(iv) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F506** Sch. 9 para. 5(2) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 54(5)**
- F507** Words in Sch. 9 para. 5(2)(b) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F508** Words in Sch. 9 para. 5(2)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

### *Individual exemptions*

- 6 <sup>[F509]</sup>Rules may make provision as to—
- (a) the procedure to be followed by the <sup>[F499]</sup>OFT] when deciding whether, in accordance with section 5—
- (i) to cancel an individual exemption that <sup>[F499]</sup>it] has granted,
- (ii) to vary or remove any of its conditions or obligations, or
- (iii) to impose additional conditions or obligations;
- (b) the form and manner in which notice of such a decision is to be given.]

#### **Textual Amendments**

- F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(55)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F509** Sch. 9 para. 6 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 54(6)** (with regs. 6(2), 10)

- 7 <sup>[F510]</sup>Rules may make provision as to—
- (a) the form and manner in which an application under section 4(6) for the extension of an individual exemption is to be made;
- (b) the circumstances in which the <sup>[F499]</sup>OFT] will consider such an application;
- (c) the procedure to be followed by the <sup>[F499]</sup>OFT] when deciding whether to grant such an application;
- (d) the form and manner in which notice of such a decision is to be given.]

#### **Textual Amendments**

- F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(55)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F510** Sch. 9 para. 7 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 54(6)** (with reg. 6(2))

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### *Block exemptions*

- [<sup>F511</sup>8 Rules may make provision as to—
- (a) the procedure to be followed by the [<sup>F512</sup>CMA] if it cancels a block exemption;
  - (b) the procedure to be followed by the [<sup>F512</sup>CMA] if it withdraws the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation.]

#### **Textual Amendments**

**F511** Sch. 9 para. 8 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 54(7)**

**F512** Word in Sch. 9 para. 8 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### *Parallel exemptions*

- 9 Rules may make provision as to—
- (a) the circumstances in which the [<sup>F513</sup>CMA] may—
    - (i) impose conditions or obligations in relation to a parallel exemption,
    - (ii) vary or remove any such conditions or obligations,
    - (iii) impose additional conditions or obligations, or
    - (iv) cancel the exemption;
  - (b) as to the procedure to be followed by the [<sup>F513</sup>CMA] if [<sup>F499</sup>it] is acting under section 10(5);
  - (c) the form and manner in which notice of a decision to take any of the steps in sub-paragraph (a) is to be given;
  - (d) the circumstances in which an exemption may be cancelled with retrospective effect.

#### **Textual Amendments**

**F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(55)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F513** Word in Sch. 9 para. 9 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(6)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### *Section 11 exemptions*

- 10 Rules may, with respect to any exemption provided by regulations made under section 11, make provision similar to that made with respect to parallel exemptions by section 10 or by rules under paragraph 9.

### *Directions withdrawing exclusions*

- 11 [<sup>F514</sup>Rules may make provision as to the factors which the [<sup>F515</sup>CMA] may take into account when [<sup>F499</sup>it] is determining the date on which a direction given under

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paragraph 4(1) of Schedule 1 or paragraph 2(3) or 9(3) of Schedule 3 is to have effect.]

#### Textual Amendments

- F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(55)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F514** Words in Sch. 9 para. 11 cease to have effect (1.5.2007) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(b), **Sch. 1 para. 54(8)** (with reg. 6(2))
- F515** Word in Sch. 9 para. 11 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(7)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### *Disclosure of information*

- 12 (1) Rules may make provision as to the circumstances in which the [F<sup>516</sup>CMA] is to be required, before disclosing information given to [F<sup>499</sup>it] by a third party in connection with the exercise of any of the [F<sup>517</sup>CMA's] functions under Part I, to give notice, and an opportunity to make representations, to the third party.
- (2) In relation to the agreement (or conduct) concerned, “third party” means a person who is not a party to the agreement (or who has not engaged in the conduct).

#### Textual Amendments

- F499** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(55)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F516** Word in Sch. 9 para. 12(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(8)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F517** Word in Sch. 9 para. 12(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(8)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### *Applications under section 47*

- 13 Rules may make provision as to—
- (a) the period within which an application under section 47(1) must be made;
  - (b) the procedure to be followed by the [F<sup>518</sup>CMA ] in dealing with the application;
  - (c) the person or persons to whom notice of the [F<sup>519</sup>CMA's] response to the application is to be given.

#### Textual Amendments

- F518** Word in Sch. 9 para. 13 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(9)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F519** Word in Sch. 9 para. 13 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(9)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *f<sup>F520</sup> Oral hearings: procedure*

#### **Textual Amendments**

**F520** Sch. 9 para. 13A and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 42(5)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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

### *f<sup>F521</sup> Procedural complaints*

#### **Textual Amendments**

**F521** Sch. 9 para. 13B and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 42(6)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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

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*[<sup>F522</sup>Settling cases*

**Textual Amendments**

**F522** Sch. 9 para. 13C and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 42(7)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

13C Rules may make provision as to the procedure to be followed in a case where, during an investigation, one or more persons notify the CMA that they accept that there has been an infringement of a kind to which the investigation relates.]

*Enforcement*

14 Rules may make provision as to the procedure to be followed when the [<sup>F523</sup>CMA] takes action under any of sections [<sup>F524</sup>32 to 40] with respect to the enforcement of the provisions of this Part.

**Textual Amendments**

**F523** Word in Sch. 9 para. 14 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 58(10)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F524** Words in Sch. 9 para. 14 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 54(9)**

SCHEDULE 10

Sections 54 and 66(5).

REGULATORS

**PART I**

MONOPOLIES

<sup>F525</sup><sub>1</sub> .....

**Textual Amendments**

**F525** Sch. 10 para. 1 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**PART II**

THE PROHIBITIONS

*Telecommunications*

2 <sup>F526</sup>(1) .....

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

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- F526(2) .....
- F526(3) .....
- F526(4) .....
- F526(5) .....
- F526(6) .....
- F527(7) .....
- F528(8) .....
- F529(9) .....
- F530(10) .....

#### Textual Amendments

- F526** Sch. 10 para. 2(1)-(6) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F527** Sch. 10 para. 2(7) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with [art. 8](#))
- F528** Sch. 10 para. 2(8) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F529** Sch. 10 para. 2(9) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with [art. 11](#))
- F530** Sch. 10 para. 2(10) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with [art. 8](#))

#### Commencement Information

- I12** Sch. 10 para. 2 wholly in force; Sch. 10 para. 2 not in force at Royal Assent see s. 76(3); Sch. 10 para. 2 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), **art. 2**; Sch. 10 para. 2 fully in force at 1.3.2000 by [S.I. 2000/344](#), **art. 2**, **Sch.**

### Gas

- 3 (1) In consequence of the repeal by this Act of provisions of the <sup>M20</sup>Competition Act 1980, the functions transferred by subsection (3) of section 36A of the <sup>M21</sup>Gas Act 1986 (functions with respect to competition) are no longer exercisable by the Director General of Gas Supply.

(2) Accordingly, that Act is amended as follows.

- F531(3) .....

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Section 36A is amended as follows.

(5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to the carrying on of activities to which this subsection applies.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

<sup>F532</sup>(6) .....

(7) In subsection (6), omit “or (3)”.

(8) In subsection (7), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

<sup>F533</sup>(9) .....

<sup>F533</sup>(10) .....

<sup>F533</sup>(11) .....

#### Textual Amendments

**F531** Sch. 10 para. 3(3) repealed (1.10.2001) by 2000 c. 27, ss. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20)

**F532** Sch. 10 para. 3(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

**F533** Sch. 10 para. 3(9)-(11) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

#### Commencement Information

**I13** Sch. 10 para. 3 wholly in force; Sch. 10 para. 3 not in force at Royal Assent see s. 76(3); Sch. 10 para. 3 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 3 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

**M20** 1980 c. 21.

**M21** 1986 c. 44.



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### Electricity

4 (1) In consequence of the repeal by this Act of provisions of the <sup>M22</sup>Competition Act 1980, the functions transferred by subsection (3) of section 43 of the <sup>M23</sup>Electricity Act 1989 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply.

(2) Accordingly, that Act is amended as follows.

<sup>F534</sup>(3) .....

(4) Section 43 is amended as follows.

(5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

<sup>F535</sup>(6) .....

(7) In subsection (5), omit “or (3)”.

(8) In subsection (6), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

<sup>F536</sup>(9) .....

#### Textual Amendments

**F534** Sch. 10 para. 4(3) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20)

**F535** Sch. 10 para. 4(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

**F536** Sch. 10 para. 4(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

#### Commencement Information

**I14** Sch. 10 para. 4 wholly in force; Sch. 10 para. 4 not in force at Royal Assent see s. 76(3); Sch. 10 para. 4 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 4 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

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**Marginal Citations**

**M22** 1980 c. 21.

**M23** 1989 c. 29.

*Water*

5 (1) In consequence of the repeal by this Act of provisions of the <sup>M24</sup>Competition Act 1980, the functions exercisable by virtue of subsection (3) of section 31 of the <sup>M25</sup>Water Industry Act 1991 (functions of Director with respect to competition) are no longer exercisable by the Director General of Water Services.

(2) Accordingly, that Act is amended as follows.

<sup>F537</sup>(3) .....

(4) In section 2, after subsection (6), insert—

“(6A) Subsections (2) to (4) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (2) to (4) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(5) Section 31 is amended as follows.

(6) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.”

<sup>F538</sup>(7) .....

(8) After subsection (4), insert—

“(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

<sup>F539</sup>(9) .....

<sup>F539</sup>(10) .....

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- (11) In subsection (7), omit “or (3)”.
- (12) In subsection (8), for paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

<sup>F540</sup>(13) .....

#### Textual Amendments

- F537** Sch. 10 para. 5(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), Sch. 7 para. 32(4)(a), **Sch. 9 Pt. 3**; S.I. 2005/968, art. 2(m)(ii)(n)
- F538** Sch. 10 para. 5(7) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F539** Sch. 10 para. 5(9)(10) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F540** Sch. 10 para. 5(13) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

- I15** Sch. 10 para. 5 wholly in force; Sch. 10 para. 5 not in force at Royal Assent see s. 76(3); Sch. 10 para. 5 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

- M24** 1980 c. 21.  
**M25** 1991 c. 56.

### *Railways*

- 6 (1) In consequence of the repeal by this Act of provisions of the <sup>M26</sup>Competition Act 1980, the functions transferred by subsection (3) of section 67 of the <sup>M27</sup>Railways Act 1993 (respective functions of the Regulator and the Director etc) are no longer exercisable by the Rail Regulator.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 4 (general duties of the Secretary of State and the Regulator), after subsection (7), insert—
- “(7A) Subsections (1) to (6) above do not apply in relation to anything done by the Regulator in the exercise of functions assigned to him by section 67(3) below (“Competition Act functions”).
- (7B) The Regulator may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (6) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”
- (4) Section 67 is amended as follows.
- (5) For subsection (3) substitute—

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

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“(3) The Regulator shall be entitled to exercise, concurrently with the Director, the functions of the Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to the supply of railway services.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director are to be read as including a reference to the Regulator (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

F541(6) .....

(7) In subsection (6)(a), omit “or (3)”.

(8) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

F542(9) .....

#### Textual Amendments

**F541** Sch. 10 para. 6(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F542** Sch. 10 para. 6(9) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

**I16** Sch. 10 para. 6 wholly in force; Sch. 10 para. 6 not in force at Royal Assent see s. 76(3); Sch. 10 para. 6 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), art. 2; Sch. 10 para. 6 fully in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, **Sch.**

#### Marginal Citations

**M26** 1980 c. 21.

**M27** 1993 c. 43.

## PART III

### THE PROHIBITIONS: NORTHERN IRELAND

#### *Electricity*

- 7 (1) In consequence of the repeal by this Act of provisions of the <sup>M28</sup>Competition Act 1980, the functions transferred by paragraph (3) of Article 46 of the <sup>M29</sup>Electricity (Northern Ireland) Order 1992 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply for Northern Ireland.

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

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- (2) Accordingly, that Order is amended as follows.
- (3) [<sup>F543</sup>In Article 6 (general duties of the Director), after paragraph (2), add—
- “ (3) Paragraph (1) does not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 46(3) (“Competition Act functions”).
- (4) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by paragraph (1) (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in the exercise of any function mentioned in Article 4(7) or paragraph (2), regard may not be had to any general matter.”]
- (4) Article 46 is amended as follows.
- (5) For paragraph (3) substitute—
- “ (3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the generation, transmission or supply of electricity.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”
- <sup>F544</sup>(6) . . . . .
- (7) In paragraph (5), omit “or (3)”.
- (8) In paragraph (6), for sub-paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- <sup>F545</sup>(9) . . . . .

**Textual Amendments**

**F543** Sch. 10 para. 7(3) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); S.R. 2003/203, art. 2, Sch.

**F544** Sch. 10 para. 7(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F545** Sch. 10 para. 7(9) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I17** Sch. 10 para. 7 wholly in force; Sch. 10 para. 7 not in force at Royal Assent see s. 76(3); Sch. 10 para. 7 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), [art. 2](#); Sch. 10 para. 7 fully in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

**M28** 1980 c. 21.

**M29** [S.I. 1992/231](#) (N.I. 1).

### Gas

- 8 (1) In consequence of the repeal by this Act of provisions of the <sup>M30</sup>Competition Act 1980, the functions transferred by paragraph (3) of Article 23 of the <sup>M31</sup>Gas (Northern Ireland) Order 1996 (functions with respect to competition) are no longer exercisable by the Director General of Gas for Northern Ireland.
- (2) Accordingly, that Order is amended as follows.
- (3) <sup>F546</sup>In Article 5 (general duties of the Department and Director), after paragraph (4), insert—
- “(4A) Paragraphs (2) to (4) do not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 23(3) (“Competition Act functions”).
- (4B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of paragraphs (2) to (4), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”]
- (4) Article 23 is amended as follows.
- (5) For paragraph (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act, connected with the conveyance, storage or supply of gas.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”
- <sup>F547</sup>(6) .....
- (7) In paragraph (5), omit “or (3)”.
- (8) In paragraph (6), for sub-paragraph (b) substitute—

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

F548(9) .....

F548(10) .....

F548(11) .....

#### Textual Amendments

**F546** Sch. 10 para. 8(3) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), [art. 1\(2\)](#), [Sch. 5](#); [S.R. 2003/203](#), [art. 2](#), [Sch.](#)

**F547** Sch. 10 para. 8(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [s. 279](#), [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch. \(with art. 8\)](#)

**F548** Sch. 10 para. 8(9)-(11) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [s. 279](#), [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch. \(with art. 8\)](#)

#### Commencement Information

**I18** Sch. 10 para. 8 wholly in force; Sch. 10 para. 8 not in force at Royal Assent see [s. 76\(3\)](#); Sch. 10 para. 8 in force for certain purposes at [26.11.1998](#) by [S.I. 1998/2750](#), [art. 2](#); Sch. 10 para. 8 fully in force at [1.3.2000](#) by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

**M30** [1980 c. 21](#).

**M31** [S.I. 1996/275 \(N.I. 2\)](#).

## PART IV

### UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Telecommunications Act 1984 (c.12)*

9 (1) The Telecommunications Act 1984 is amended as follows.

F549(2) .....

F549(3) .....

F549(4) .....

F550(5) .....

F551(6) .....

(7) In section 101(3) (general restrictions on disclosure of information)—

(a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M32</sup>Resale Prices Act 1976);

(b) after paragraph (m), insert—  
“(n) the Competition Act 1998”.

(8) At the end of section 101, insert—



*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.”

#### Textual Amendments

**F549** Sch. 10 para. 9(2)-(4) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with [art. 11](#))

**F550** Sch. 10 para. 9(5) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with [art. 8](#))

**F551** Sch. 10 para. 9(6) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with [art. 11](#))

#### Commencement Information

**I19** Sch. 10 para. 9 wholly in force; Sch. 10 para. 9 not in force at Royal Assent see s. 76(3); Sch. 10 para. 9 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), **art. 2**; Sch. 10 para. 9(7)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), **art. 2**, **Sch.**; Sch. 10 para. 9(1)(2)(5) in force at 1.4.1999 by [S.I. 1999/505](#), **art. 2**, **Sch. 2**; Sch. 10 para. 9(3)(4)(6)(7)(a) and (8) in force at 1.3.2000 by [S.I. 2000/344](#), **art. 2**, **Sch.**

#### Marginal Citations

**M32** 1976 c. 53.

#### *The Gas Act 1986 (c.44)*

10 (1) The Gas Act 1986 is amended as follows.

<sup>F552</sup>(2) .....

(3) In section 25, omit subsection (2) (which falls with the repeal of the <sup>M33</sup>Restrictive Trade Practices Act 1976).

<sup>F553</sup>(4) .....

(5) In section 28 (orders for securing compliance with certain provisions), in subsection (5), after paragraph (aa), omit “or” and after paragraph (b), insert “or  
 (c) that the most appropriate way of proceeding is under the Competition Act 1998.”

(6) In section 42(3) (general restrictions on disclosure of information)—

(a) omit paragraphs (e) and (f) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M34</sup>Resale Prices Act 1976);

(b) after paragraph (n), insert—  
 “(o) the Competition Act 1998”.

(7) At the end of section 42, insert—

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Textual Amendments

**F552** Sch. 10 para. 10(2) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(2\)](#)

**F553** Sch. 10 para. 10(4) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

#### Commencement Information

**I20** Sch. 10 para. 10 wholly in force; Sch. 10 para. 10 not in force at Royal Assent see s. 76(3); Sch. 10 para. 10 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), art. 2; Sch. 10 para. 10(6)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 10 para. 10(1)(2) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 10 para. 10 (3)-(5)(6)(a) and (7) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### Marginal Citations

**M33** 1976 c. 34.

**M34** 1976 c. 53.

#### *The Water Act 1989 (c.15)*

- 11 In section 174(3) of the Water Act 1989 (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after paragraph (l), insert—  
“(ll) the Competition Act 1998”.

#### Commencement Information

**I21** Sch. 10 para. 11 wholly in force; Sch. 10 para. 11 not in force at Royal Assent see s. 76(3); Sch. 10 para. 11(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 10 para. 11(a) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### *The Electricity Act 1989 (c.29)*

- 12 (1) The Electricity Act 1989 is amended as follows.
- (2) In section 12 (modification references to Competition Commission), for subsections (8) and (9) substitute—
- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;

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*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (c) in section 70 of the 1973 Act—
  - (i) references to the Secretary of State were references to the Director, and
  - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
  - (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.”
- (3) In section 13, omit subsection (2) (which falls with the repeal of the <sup>M35</sup>Restrictive Trade Practices Act 1976).
- <sup>F554</sup>(4) . . . . .
- (5) In section 25 (orders for securing compliance), in subsection (5), after paragraph (b), omit “or” and after paragraph (c), insert “or
  - (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- <sup>F555</sup>(6) . . . . .
- (7) In section 57(3) (general restrictions on disclosure of information)—
  - (a) omit paragraphs (d) and (e) (which refer to the <sup>M36</sup>Restrictive Trade Practices Act 1976 and the <sup>M37</sup>Resale Prices Act 1976);
  - (b) after paragraph (no), insert—
    - “(nop) the Competition Act 1998”.
- (8) At the end of section 57, insert—
  - “(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Textual Amendments

**F554** Sch. 10 para. 12(4) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F555** Sch. 10 para. 12(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I22** Sch. 10 para. 12 wholly in force; Sch. 10 para. 12 not in force at Royal Assent see s. 76(3); Sch. 10 para. 12(7)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 12(1)(2)(6) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 12 (3)-(5)(7)(a) and (8) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M35** 1976 c. 34.

**M36** 1976 c. 34.

**M37** 1976 c. 53.

### *The Water Industry Act 1991 (c.56)*

- 13 (1) The Water Industry Act 1991 is amended as follows.
- (2) <sup>F556</sup>In section 12(5) (determinations under conditions of appointment)—
- (a) after “this Act”, insert “ or ”;
  - (b) omit “or the 1980 Act”.]
- (3) <sup>F556</sup>In section 14 (modification references to Competition Commission), for subsections (7) and (8) substitute—
- “(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (7A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (8) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (8A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select one or more of the members appointed under subsection (8) to be members of the group.”]
- (4) In section 15, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (5) In section 17 (modification by order under other enactments)—

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “ or ”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (4), omit “or the 1980 Act”.
- (6) In section 19 (exceptions to duty to enforce), after subsection (1), insert—
- “(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 19(3), after “subsection (1) above”, insert “ or, in the case of the Director, is satisfied as mentioned in subsection (1A) above, ”.
- <sup>F557</sup>(8) .....
- (9) After section 206(9) (restriction on disclosure of information), insert—
- “(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (9) of this section.”
- (10) In Schedule 15 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the <sup>M38</sup>Restrictive Trade Practices Act 1976 and the <sup>M39</sup>Resale Prices Act 1976;
  - (b) after the entry relating to the <sup>M40</sup>Railways Act 1993, insert the entry— “ The Competition Act 1998 ”.

#### Textual Amendments

**F556** Sch. 10 para. 13(2)(3) repealed (1.4.2004 for specified purposes, 1.10.2004 in so far as not already in force) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 32\(4\)\(b\)](#), [Sch. 9 Pt. 3](#); [S.I. 2004/641](#), art. 3(y)(z), [Sch. 2](#); [S.I. 2004/2528](#), art. 2(t)(ii)(u)

**F557** Sch. 10 para. 13(8) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch. \(with art. 8\)](#)

#### Commencement Information

**I23** Sch. 10 para. 13 wholly in force; Sch. 10 para. 13 not in force at Royal Assent see s. 76(3); Sch. 10 para. 13(10)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 10 para. 13(1)(3)(8) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 10 para. 13 (2)(4)-(7)(9) and (10)(a) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### Marginal Citations

**M38** 1976 c. 34.

**M39** 1976 c. 53.

**M40** 1993 c. 43.

*Status:* Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*The Water Resources Act 1991 (c.57)*

- 14 In Schedule 24 to the Water Resources Act 1991 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
  - (b) after the entry relating to the <sup>M41</sup>Coal Industry Act 1994, insert the entry—  
“ The Competition Act 1998 ”.

**Commencement Information**

**I24** Sch. 10 para. 14 wholly in force; Sch. 10 para. 14 not in force at Royal Assent see s. 76(3); Sch. 10 para. 14(b) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 10 para. 14(a) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

**Marginal Citations**

**M41** 1994 c. 21.

*The Railways Act 1993 (c.43)*

- 15 (1) The Railways Act 1993 is amended as follows.
- <sup>F558</sup>(2) .....
- (3) In section 14, omit subsection (2) (which falls with the repeal of the <sup>M42</sup>Restrictive Trade Practices Act 1976).
- <sup>F559</sup>(4) .....
- (5) In section 22, after subsection (6), insert—
- “(6A) Neither the Director General of Fair Trading nor the Regulator may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.
- (6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—
- (a) which is connected with an access agreement; and
  - (b) in respect of which section 35(1)(b) of that Act applies.”
- (6) In section 55 (orders for securing compliance), after subsection (5), insert—
- “(5A) The Regulator shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 55—
- <sup>F560</sup>(a) .....
- (b) in subsection (11), for “subsection (10)” substitute “ subsections (5A) and (10) ”.
- (8) Omit section 131 (modification of Restrictive Trade Practices Act 1976).

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (9) In section 145(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the <sup>M43</sup>Restrictive Trade Practices Act 1976 and the <sup>M44</sup>Resale Prices Act 1976);
  - (b) after paragraph (q), insert—
 

“(qq) the Competition Act 1998.”
- (10) After section 145(6), insert—
- “(6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Textual Amendments

- F558** Sch. 10 para. 15(2) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 32(2)**
- F559** Sch. 10 para. 15(4) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), **Sch.** (with art. 8)
- F560** Sch. 10 para. 15(7)(a) repealed (1.2.2001) by [2000 c. 38](#), s. 274, **Sch. 31 Pt. IV**; [S.I. 2001/57](#), art 3(1), **Sch. 2 Pt. I**

#### Commencement Information

- I25** Sch. 10 para. 15 wholly in force; Sch. 10 para. 15 not in force at Royal Assent see s. 76(3); Sch. 10 para. 15(9)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, **Sch.**; Sch. 10 para. 15(1)(2) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, **Sch. 2**; Sch. 10 para. 15(3)-(8), (9)(a) and (10) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, **Sch.**

#### Marginal Citations

- M42** 1976 c. 34.  
**M43** 1976 c. 34.  
**M44** 1976 c. 53.

#### *The Channel Tunnel Rail Link Act 1996 (c.61)*

- 16 (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (6), at the end of the paragraph about regulatory functions, insert “other than any functions assigned to him by virtue of section 67(3) of that Act (“Competition Act functions”).
- (7) The Regulator may, when exercising any Competition Act function, have regard to any matter to which he would have regard if—
- (a) he were under the duty imposed by subsection (1) or (2) above in relation to that function; and
  - (b) the matter is one to which the Director General of Fair Trading could have regard if he were exercising that function.”
- (3) In section 22 (restriction of functions in relation to competition etc.), for subsection (3) substitute—



*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- “(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the <sup>M45</sup>Railways Act 1993 (by virtue of which he exercises concurrently with the Director General of Fair Trading certain functions under Part I of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—
- (a) any agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act that have been entered into or taken by, or
  - (b) any conduct of the kind mentioned in section 18(1) of that Act that has been engaged in by,
- a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”

**Marginal Citations**

**M45** 1993 c. 43.

**PART V**

MINOR AND CONSEQUENTIAL AMENDMENTS: NORTHERN IRELAND

*The Electricity (Northern Ireland) Order 1992*

- 17 (1) The <sup>M46</sup>Electricity (Northern Ireland) Order 1992 is amended as follows.
- (2) In Article 15 (modification references to Competition Commission), for paragraphs (8) and (9) substitute—
- “(8) The provisions mentioned in paragraph (8A) are to apply in relation to references under this Article as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) “merger reference” included a reference under this Article;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) The Secretary of State may appoint members of the Competition Commission for the purposes of references under this Article.

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under paragraph (9) to be members of the group.”
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the <sup>M47</sup>Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (2)—
    - (i) after sub-paragraph (a), insert “ or ”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (3), omit “or the 1980 Act”.
- (5) [<sup>F561</sup>In Article 28 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”]

<sup>F562</sup>(6) .....

(7) [<sup>F563</sup>In Article 61(3) (general restrictions on disclosure of information)—

    - (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M48</sup>Resale Prices Act 1976);
    - (b) after sub-paragraph (t), add—
 

“(u) the Competition Act 1998”.]

(8) [<sup>F563</sup>At the end of Article 61, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (6).”]

(9) In Schedule 12, omit paragraph 16 (which amends the <sup>M49</sup>Restrictive Trade Practices Act 1976).

#### Textual Amendments

**F561** Sch. 10 para. 17(5) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); [S.R. 2003/203](#), art. 2, [Sch.](#)

**F562** Sch. 10 para. 17(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

**F563** Sch. 10 para. 17(7)(8) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); [S.R. 2003/203](#), art. 2, [Sch.](#)

#### Commencement Information

**I26** Sch. 10 para. 17 partly in force; Sch. 10 para. 17 not in force at Royal Assent see s. 76(3); Sch. 10 para. 17(7)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 10 para. 17(1)(2)(6) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 10 para. 17(3)-(5)(7)(a)(8) and (9) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

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*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Marginal Citations

- M46** S.I. 1992/231 (N.I. 1).
- M47** 1976 c. 34.
- M48** 1976 c. 53.
- M49** 1976 c. 34.

### *The Gas (Northern Ireland) Order 1996*

- 18 (1) The <sup>M50</sup>Gas (Northern Ireland) Order 1996 is amended as follows.
- <sup>F564</sup>(2) . . . . .
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (3)—
    - (i) after sub-paragraph (a), insert “ or ”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (5), omit “or the 1980 Act”.
- (5) [<sup>F565</sup>In Article 19 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”]

(6) [<sup>F565</sup>In Article 44(4) (general restrictions on disclosure of information)—

    - (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M51</sup>Resale Prices Act 1976);
    - (b) after sub-paragraph (u), add—  
“(v) the Competition Act 1998”.]

(7) [<sup>F566</sup>At the end of Article 44, insert—

    - “(8) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (7).”]

### Textual Amendments

- F564** Sch. 10 para. 18(2) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003](#) (S.I. 2003/1398), art. 1, **Sch. para. 32(2)**
- F565** Sch. 10 para. 18(5)(6) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003](#) (S.I. 2003/419), art. 1(2), **Sch. 5**; S.R. 2003/203, art. 2, Sch.
- F566** Sch. 10 para. 18(7) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003](#) (S.I. 2003/419), art. 1(2), **Sch. 5**; S.R. 2003/203, art. 2, Sch.

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**Commencement Information**

**I27** Sch. 10 para. 18 partly in force; Sch. 10 para. 18 not in force at Royal Assent see s. 76(3); Sch. 10 para. 18(6)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#); Sch. 10 para. 18(1)(2) in force at 1.4.1999 by [S.I. 1999/505](#), [art. 2](#), [Sch. 2](#); Sch. 10 para. 18(3)-(5)(6)(a) and (7) in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

**Marginal Citations**

**M50** [S.I. 1996/275](#) (N.I. 2).  
**M51** 1976 c. 53.

<sup>F567</sup>SCHEDULE 11

Section 55(4).

**Textual Amendments**

**F567** Sch. 11 repealed (20.6.2003) by [Enterprise Act 2002](#) (c. 40), ss. 247(j), 279, [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 6](#))

SCHEDULE 12

Section 74(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Fair Trading Act 1973 (c.41)*

- 1 (1) The Fair Trading Act 1973 is amended as follows.
- (2) Omit section 4 and Schedule 3 (which make provision in respect of the Monopolies and Mergers Commission).
- (3) Omit—
  - (a) section 10(2),
  - (b) section 54(5),
  - (c) section 78(3),
  - (d) paragraph 3(1) and (2) of Schedule 8,
 (which fall with the repeal of the <sup>M52</sup>Restrictive Trade Practices Act 1976).

<sup>F568</sup>(4) .....

<sup>F568</sup>(5) .....

<sup>F568</sup>(6) .....

<sup>F568</sup>(7) .....

- (8) Omit section 45 (power of the Director to require information about complex monopoly situations).

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- F569(9) .....
- F570(10) .....
- F570(11) .....
- F570(12) .....
- F570(13) .....
- F571(14) .....
- (15) In section 135(1) (financial provisions)—
- (a) in the words before paragraph (a) and in paragraph (b), omit “or the Commission”; and
  - (b) omit paragraph (a).

#### Textual Amendments

- F568** Sch. 12 para. 1(4)-(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F569** Sch. 12 para. 1(9) repealed (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 32(3)(a)**
- F570** Sch. 12 para. 1(10)-(13) repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 1(1), **Sch. para. 6(2)** (with art. 3)
- F571** Sch. 12 para. 1(14) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

- I28** Sch. 12 para. 1 wholly in force; Sch. 12 para. 1 not in force at Royal Assent see s. 76(3); Sch. 12 para. 1(14) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 12 para. 1(1)(2)(9)-(13)(15) in force at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; Sch. 12 para. 1(3)(a)(b)(d) in force at 10.11.1999 by S.I. 1999/2859, art. 2; Sch. 12 para. 1(3)(c)(4)-(8) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

- M52** 1976 c. 34.

#### *The Energy Act 1976 (c.76)*

- 2 In the Energy Act 1976, omit section 5 (temporary relief from restrictive practices law in relation to certain agreements connected with petroleum).

#### *The Estate Agents Act 1979 (c.38)*

- 3 In section 10(3) of the Estate Agents Act 1979 (restriction on disclosure of information), in paragraph (a)—
- (a) omit “or the <sup>M53</sup>Restrictive Trade Practices Act 1976”; and
  - (b) after “the <sup>M54</sup>Coal Industry Act 1994”, insert “ or the Competition Act 1998 ”.

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### Commencement Information

**I29** Sch. 12 para. 3 wholly in force; Sch. 12 para. 3 not in force at Royal Assent see s. 76(3); Sch. 12 para. 3(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 12 para. 3(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

### Marginal Citations

**M53** 1976 c. 34.

**M54** 1994 c. 21.

### *The Competition Act 1980 (c.21)*

- 4 (1) The Competition Act 1980 is amended as follows.
- (2) In section 11(8) (public bodies and other persons referred to the Commission), omit paragraph (b) and the “and” immediately before it.
- (3) <sup>F572</sup>For section 11(9) (which makes provision for certain functions of the Competition Commission under the <sup>M55</sup>Fair Trading Act 1973 to apply in relation to references under the Competition Act 1980) substitute—
- “(9) The provisions mentioned in subsection (9A) are to apply in relation to a reference under this section as if—
- (a) the functions of the Competition Commission under this section were functions under the Fair Trading Act 1973;
- (b) the expression “merger reference” included a reference to the Commission under this section; and
- (c) in paragraph 20(2)(a) of Schedule 7 to the Competition Act 1998, the reference to section 56 of the Fair Trading Act 1973 were a reference to section 12 below.
- (9A) The provisions are—
- (a) sections 70 (time limit for report on merger), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973; and
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions).”]
- (4) <sup>F572</sup>In section 13 (investigation of prices directed by Secretary of State)—
- (a) in subsection (1), omit from “but the giving” to the end;
- (b) for subsection (6) substitute—
- “(6) For the purposes of an investigation under this section the Director may, by notice in writing signed by him—
- (a) require any person to produce—
- (i) at a time and a place specified in the notice,
- (ii) to the Director or to any person appointed by him for the purpose,
- any documents which are specified or described in the notice and which are documents in his custody or under

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- his control and relating to any matter relevant to the investigation; or
- (b) require any person carrying on any business to—
  - (i) furnish to the Director such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (ii) specify the time, manner and form in which any such estimates, forecasts, returns or information are to be furnished.
- (7) No person shall be compelled, for the purpose of any investigation under this section—
  - (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session; or
  - (b) in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (8) Subsections (6) to (8) of section 85 of the <sup>M56</sup>Fair Trading Act 1973 (enforcement provisions relating to notices requiring production of documents etc.) shall apply in relation to a notice under subsection (6) above as they apply in relation to a notice under section 85(1) but as if, in section 85(7), for the words from “any one” to “the Commission” there were substituted “the Director.””]
- (5) In section 15 (special provisions for agricultural schemes) omit subsections (2)(b), (3) and (4).
- (6) In section 16 (reports), omit subsection (3).
- (7) In section 17 (publication etc. of reports)—
  - (a) in subsections (1) and (3) to (5), omit “8(1)”;
  - (b) in subsection (2), omit “8(1) or”; and
  - (c) in subsection (6), for “sections 9, 10 or” substitute “section ”.
- (8) In section 19(3) (restriction on disclosure of information), omit paragraphs (d) and (e).
- (9) In section 19(3), after paragraph (q), insert—
  - “(r) the Competition Act 1998”.
- (10) In section 19(5)(a), omit “or in anything published under section 4(2)(a) above”.
- (11) Omit section 22 (which amends the <sup>M57</sup>Fair Trading Act 1973).
- <sup>F573</sup>(12) . . . . .
- (13) Omit sections 25 to 30 (amendments of the <sup>M58</sup>Restrictive Trade Practices Act 1976).
- (14) In section 31 (orders and regulations)—
  - (a) omit subsection (2); and
  - (b) in subsection (3), omit “10”.
- (15) In section 33 (short title etc)—



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- <sup>F574</sup>(a) .....
- (b) omit subsections (3) and (4).

#### Textual Amendments

- F572** Sch. 12 para. 4(3)(4) repealed (20.6.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)
- F573** Sch. 12 para. 4(12) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)
- F574** Sch. 12 para. 4(15)(a) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

#### Commencement Information

- I30** Sch. 12 para. 4 wholly in force; Sch. 12 para. 4 not in force at Royal Assent see s. 76(3); Sch. 12 para. 4(9) (11) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 12 para. 4(1)(3)(12) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 12 para. 4(2), (4)-(8)(10)(13)-(15) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### Marginal Citations

- M55** 1973 c. 41.  
**M56** 1973 c. 41.  
**M57** 1973 c. 41.  
**M58** 1976 c. 34.

#### *Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))*

- 5 In Schedule 6 to the Magistrates' Courts (Northern Ireland) Order 1981, omit paragraphs 42 and 43 (which amend the Restrictive Trade Practices Act 1976).

#### *Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12))*

- 6 In Schedule 8 to the Agricultural Marketing (Northern Ireland) Order 1982—
- (a) omit the entry relating to paragraph 16(2) of Schedule 3 to the <sup>M59</sup>Fair Trading Act 1973; and
- (b) in the entry relating to the <sup>M60</sup>Competition Act 1980—
- (i) for “sections” substitute “ section ”;
- (ii) omit “and 15(3)”.

#### Commencement Information

- I31** Sch. 12 para. 6 wholly in force; Sch. 12 para. 6 not in force at Royal Assent see s. 76(3); Sch. 12 para. 6(a) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 12 para. 6(b) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### Marginal Citations

- M59** 1973 c. 41.  
**M60** 1980 c. 21.

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*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### *The Airports Act 1986 (c.31)*

F575-7 .....

#### **Textual Amendments**

**F575** Sch. 12 para. 7 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(3\)\(b\)](#)

F576 ...

#### **Textual Amendments**

**F576** Sch. 12 para. 8 and cross-heading repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 19](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

- 8 In Schedule 11 to the Financial Services Act 1986, in paragraph 12—
- (a) in sub-paragraph (1), omit “126”;
  - (b) omit sub-paragraph (2).

#### *The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))*

- 9 In Part II of Schedule 1 to the <sup>M61</sup>Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986, omit the entries relating to the <sup>M62</sup>Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.

#### **Marginal Citations**

**M61** 1976 c. 34.

**M62** 1976 c. 53.

### *The Consumer Protection Act 1987 (c.43)*

- 10 In section 38(3) of the Consumer Protection Act 1987 (restrictions on disclosure of information)—
- (a) omit paragraphs (e) and (f); and
  - (b) after paragraph (o), insert—
    - “(p) the Competition Act 1998.”

#### **Commencement Information**

**I32** Sch. 12 para. 10 wholly in force; Sch. 12 para. 10 not in force at Royal Assent see s. 76(3); Sch. 12 para. 10(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 12 para. 10(a) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

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*The Channel Tunnel Act 1987 (c.53)*

F577 11 .....

**Textual Amendments**  
F577 Sch. 12 para. 11 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(3\)\(c\)](#)

*The Road Traffic (Consequential Provisions) Act 1988 (c.54)*

12 In Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (consequential amendments), omit paragraph 19.

*The Companies Act 1989 (c.40)*

13 In Schedule 20 to the Companies Act 1989 (amendments about mergers and related matters), omit paragraphs 21 to 24.

*The Broadcasting Act 1990 (c.42)*

F578 14 .....

**Textual Amendments**  
F578 Sch. 12 para. 14 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(3\)\(d\)](#)

*The Tribunals and Inquiries Act 1992 (c.53)*

15 In Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals), after paragraph 9, insert—

“Competition	9A. An appeal tribunal established under section 48 of the Competition Act 1998.”
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*The Osteopaths Act 1993 (c.21)*

F579 16 .....

**Textual Amendments**  
F579 Sch. 12 para. 16 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(3\)\(e\)](#)

*The Chiropractors Act 1994 (c.17)*

F580 17 .....

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### Textual Amendments

**F580** Sch. 12 para. 17 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(3\)\(f\)](#)

### *The Coal Industry Act 1994 (c.21)*

- 18 In section 59(4) of the Coal Industry Act 1994 (information to be kept confidential by the Coal Authority)—
- (a) omit paragraphs (e) and (f); and
  - (b) after paragraph (m), insert—  
“(n) the Competition Act 1998.”

### Commencement Information

**I33** Sch. 12 para. 18 wholly in force; Sch. 12 para. 18 not in force at Royal Assent see s. 76(3); Sch. 12 para. 18(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 12 para. 18(a) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

### *The Deregulation and Contracting Out Act 1994 (c.40)*

- 19 (1) The Deregulation and Contracting Out Act 1994 is amended as follows.
- (2) Omit—
    - (a) section 10 (restrictive trade practices: non-notifiable agreements); and
    - (b) section 11 (registration of commercially sensitive information).
  - (3) In section 12 (anti-competitive practices: competition references), omit subsections (1) to (6).
  - (4) In Schedule 4, omit paragraph 1.
  - (5) In Schedule 11 (miscellaneous deregulatory provisions: consequential amendments), in paragraph 4, omit sub-paragraphs (3) to (7).

### *The Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))*

**F581**<sup>20</sup> .....

### Textual Amendments

**F581** Sch. 12 para. 20 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, [Sch. para. 32\(3\)\(g\)](#)

### *The Broadcasting Act 1996 (c.55)*

- 21 In section 77 of the Broadcasting Act 1996 (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), omit subsection (2).

*Status: Point in time view as at 02/05/2020. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULE 13

Section 74(2).

### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

#### GENERAL

#### *Interpretation*

1 (1) In this Schedule—

- “RPA” means the <sup>M63</sup>Resale Prices Act 1976;
  - “RTPA” means the Restrictive Trade Practices Act 1976;
  - “continuing proceedings” has the meaning given by paragraph 15;
  - “the Court” means the Restrictive Practices Court;
  - “Director” means the Director General of Fair Trading;
  - “document” includes information recorded in any form;
  - “enactment date” means the date on which this Act is passed;
  - “information” includes estimates and forecasts;
  - “interim period” means the period beginning on the enactment date and ending immediately before the starting date;
  - “prescribed” means prescribed by an order made by the Secretary of State;
  - “regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10 [<sup>F582</sup>and the Civil Aviation Authority];
  - “starting date” means the date on which section 2 comes into force;
  - “transitional period” means the transitional period provided for in Chapters III and IV of Part IV of this Schedule.
- (2) Sections 30, 44, 51, 53, 55, 56, 57 and 59(3) and (4) and paragraph 12 of Schedule 9 (“the applied provisions”) apply for the purposes of this Schedule as they apply for the purposes of Part I of this Act.
- (3) Section 2(5) applies for the purposes of any provisions of this Schedule which are concerned with the operation of the Chapter I prohibition as it applies for the purposes of Part I of this Act.
- (4) In relation to any of the matters in respect of which a regulator may exercise powers as a result of paragraph 35(1), the applied provisions are to have effect as if references to the Director included references to the regulator.
- (5) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because a transitional period is provided by virtue of this Schedule, does not require those provisions of the agreement in respect of which there is a transitional period to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

#### Textual Amendments

**F582** Words in the definition of “regulator” in Sch. 13 para. 1(1) inserted (1.2.2001) by 2000 c. 38, ss. 97, **Sch. 8 Pt. IV para. 16(2)** (with s. 106); S.I. 2001/57, art. 3, **Sch. 2 Pt. I**

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### Marginal Citations

M63 1976 c. 53.

#### *General power to make transitional provision and savings*

- 2 (1) Nothing in this Schedule affects the power of the Secretary of State under section 75 to make transitional provisions or savings.
- (2) An order under that section may modify any provision made by this Schedule.

#### *Advice and information*

- 3 (1) The Director may publish advice and information explaining provisions of this Schedule to persons who are likely to be affected by them.
- (2) Any advice or information published by the Director under this paragraph is to be published in such form and manner as he considers appropriate.

### Modifications etc. (not altering text)

C83 Sch. 13 para. 3 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\), 2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

## PART II

### DURING THE INTERIM PERIOD

#### *Block exemptions*

- 4 (1) The Secretary of State may, at any time during the interim period, make one or more orders for the purpose of providing block exemptions which are effective on the starting date.
- (2) An order under this paragraph has effect as if properly made under section 6.

#### *Certain agreements to be non-notifiable agreements*

- 5 An agreement which—
- (a) is made during the interim period, and
- (b) satisfies the conditions set out in paragraphs (a), (c) and (d) of section 27A(1) of the RTPA,
- is to be treated as a non-notifiable agreement for the purposes of the RTPA.

#### *Application of RTPA during the interim period*

- 6 In relation to agreements made during the interim period—
- (a) the Director is no longer under the duty to take proceedings imposed by section 1(2)(c) of the RTPA but may continue to do so;

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- (b) section 21 of that Act has effect as if subsections (1) and (2) were omitted; and
- (c) section 35(1) of that Act has effect as if the words “or within such further time as the Director may, upon application made within that time, allow” were omitted.

### *Guidance*

- 7 (1) Sub-paragraphs (2) to (4) apply in relation to agreements made during the interim period.
- (2) An application may be made to the Director in anticipation of the coming into force of section 13 in accordance with directions given by the Director and such an application is to have effect on and after the starting date as if properly made under section 13.
- (3) The Director may, in response to such an application—
- (a) give guidance in anticipation of the coming into force of section 2; or
  - (b) on and after the starting date, give guidance under section 15 as if the application had been properly made under section 13.
- (4) Any guidance so given is to have effect on and after the starting date as if properly given under section 15.

#### **Modifications etc. (not altering text)**

**C84** Sch. 13 para. 7 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\), 2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

## **PART III**

### ON THE STARTING DATE

#### *Applications which fall*

- 8 (1) Proceedings in respect of an application which is made to the Court under any of the provisions mentioned in sub-paragraph (2), but which is not determined before the starting date, cease on that date.
- (2) The provisions are—
- (a) sections 2(2), 35(3), 37(1) and 40(1) of the RTPA and paragraph 5 of Schedule 4 to that Act;
  - (b) section 4(1) of the RTPA so far as the application relates to an order under section 2(2) of that Act; and
  - (c) section 25(2) of the RPA.
- (3) The power of the Court to make an order for costs in relation to any proceedings is not affected by anything in this paragraph or by the repeals made by section 1.



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### *Orders and approvals which fall*

- 9 (1) An order in force immediately before the starting date under—
- (a) section 2(2), 29(1), 30(1), 33(4), 35(3) or 37(1) of the RTPA; or
  - (b) section 25(2) of the RPA,
- ceases to have effect on that date.
- (2) An approval in force immediately before the starting date under section 32 of the RTPA ceases to have effect on that date.

## PART IV

### ON AND AFTER THE STARTING DATE

## CHAPTER I

### GENERAL

#### *Duty of Director to maintain register etc.*

- 10 (1) This paragraph applies even though the relevant provisions of the RTPA are repealed by this Act.
- (2) The Director is to continue on and after the starting date to be under the duty imposed by section 1(2)(a) of the RTPA to maintain a register in respect of agreements—
- (a) particulars of which are, on the starting date, entered or filed on the register;
  - (b) which fall within sub-paragraph (4);
  - (c) which immediately before the starting date are the subject of proceedings under the RTPA which do not cease on that date by virtue of this Schedule; or
  - (d) in relation to which a court gives directions to the Director after the starting date in the course of proceedings in which a question arises as to whether an agreement was, before that date—
    - (i) one to which the RTPA applied;
    - (ii) subject to registration under that Act;
    - (iii) a non-notifiable agreement for the purposes of that Act.
- (3) The Director is to continue on and after the starting date to be under the duties imposed by section 1(2)(a) and (b) of the RTPA of compiling a register of agreements and entering or filing certain particulars in the register, but only in respect of agreements of a kind referred to in paragraph (b), (c) or (d) of sub-paragraph (2).
- (4) An agreement falls within this sub-paragraph if—
- (a) it is subject to registration under the RTPA but—
    - (i) is not a non-notifiable agreement within the meaning of section 27A of the RTPA, or
    - (ii) is not one to which paragraph 5 applies;
  - (b) particulars of the agreement have been provided to the Director before the starting date; and
  - (c) as at the starting date no entry or filing has been made in the register in respect of the agreement.

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- (5) Sections 23 and 27 of the RTPA are to apply after the starting date in respect of the register subject to such modifications, if any, as may be prescribed.
- (6) In sub-paragraph (2)(d) “court” means—
- (a) the High Court;
  - (b) the Court of Appeal;
  - (c) the Court of Session;
  - (d) the High Court or Court of Appeal in Northern Ireland; or
  - <sup>[F583]</sup>(e) the Supreme Court.]

#### Textual Amendments

**F583** Sch. 13 para. 10(6)(e) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 65\(5\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

#### Commencement Information

**I34** Sch. 13 para. 10 wholly in force; Sch. 13 para. 10 not in force at Royal Assent see s. 76(3); Sch. 13 para. 10(5) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#) Sch. 13 para. 10(1)-(4) and (6) fully in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### *RTPA section 3 applications*

- 11 (1) Even though section 3 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed—
- (a) in relation to a continuing application under that section; or
  - (b) so as to allow an application to be made under that section on or after the starting date in respect of a continuing application under section 1(3) of the RTPA.
- (2) “Continuing application” means an application made, but not determined, before the starting date.

#### Commencement Information

**I35** Sch. 13 para. 11 partly in force; Sch. 13 para. 11 not in force at Royal Assent see s. 76(3); Sch. 13 para. 11 in force for certain purposes at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#)

#### *RTPA section 26 applications*

- 12 (1) Even though section 26 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed, in relation to an application which is made under that section, but not determined, before the starting date.
- (2) If an application under section 26 is determined on or after the starting date, this Schedule has effect in relation to the agreement concerned as if the application had been determined immediately before that date.

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### Commencement Information

- I36** Sch. 13 para. 12 wholly in force; Sch. 13 para. 12 not in force at Royal Assent see s. 76(3); Sch. 13 para. 12(1) in force for certain purposes at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 13 para. 12(1) and (2) fully in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

### *Right to bring civil proceedings*

- 13 (1) Even though section 35 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of section 27ZA or 35(2) of that Act to bring civil proceedings in respect of an agreement (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).
- (2) Even though section 25 of the RPA is repealed by this Act, the provisions of that section (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of subsection (3) of that section to bring civil proceedings (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

## CHAPTER II

### CONTINUING PROCEEDINGS

#### *The general rule*

- 14 (1) The Chapter I prohibition does not apply to an agreement at any time when the agreement is the subject of continuing proceedings under the RTPA.
- (2) The Chapter I prohibition does not apply to an agreement relating to goods which are the subject of continuing proceedings under section 16 or 17 of the RPA to the extent to which the agreement consists of exempt provisions.
- (3) In sub-paragraph (2) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
- (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.
- (4) If the Chapter I prohibition does not apply to an agreement because of this paragraph, the provisions of, or made under, the RTPA or the RPA are to continue to have effect in relation to the agreement.
- (5) The repeals made by section 1 do not affect—
- (a) continuing proceedings; or
  - (b) proceedings of the kind referred to in paragraph 11 or 12 of this Schedule which are continuing after the starting date.

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*Meaning of “continuing proceedings”*

- 15 (1) For the purposes of this Schedule “continuing proceedings” means proceedings in respect of an application made to the Court under the RTPA or the RPA, but not determined, before the starting date.
- (2) But proceedings under section 3 or 26 of the RTPA to which paragraph 11 or 12 applies are not continuing proceedings.
- (3) The question whether (for the purposes of Part III, or this Part, of this Schedule) an application has been determined is to be decided in accordance with sub-paragraphs (4) and (5).
- (4) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (5) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

*RTPA section 4 proceedings*

- 16 Proceedings on an application for an order under section 4 of the RTPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under that section is granted before the starting date but the application itself is not made before that date.

*RPA section 16 or 17 proceedings*

- 17 Proceedings on an application for an order under section 16 or 17 of the RPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under section 16 or 17 of the RPA is granted before the starting date, but the application itself is not made before that date.

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### *Continuing proceedings which are discontinued*

- 18 (1) On an application made jointly to the Court by all the parties to any continuing proceedings, the Court must, if it is satisfied that the parties wish it to do so, discontinue the proceedings.
- (2) If, on an application under sub-paragraph (1) or for any other reason, the Court orders the proceedings to be discontinued, this Schedule has effect (subject to paragraphs 21 and 22) from the date on which the proceedings are discontinued as if they had never been instituted.

## CHAPTER III

### THE TRANSITIONAL PERIOD

#### *The general rule*

- 19 (1) Except where this Chapter or Chapter IV provides otherwise, there is a transitional period, beginning on the starting date and lasting for one year, for any agreement made before the starting date.
- (2) The Chapter I prohibition does not apply to an agreement to the extent to which there is a transitional period for the agreement.
- (3) The Secretary of State may by regulations provide for sections 13 to 16 and Schedule 5 to apply with such modifications (if any) as may be specified in the regulations, in respect of applications to the Director about agreements for which there is a transitional period.

#### **Modifications etc. (not altering text)**

**C85** Sch. 13 para. 19(3) modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

#### **Commencement Information**

**I37** Sch. 13 para. 19 wholly in force; Sch. 13 para. 19 not in force at Royal Assent see s. 76(3); Sch. 13 para. 19(3) in force at 11.1.1999 by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#); Sch. 13 para. 19(1) and (2) in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

### *Cases for which there is no transitional period*

- 20 (1) There is no transitional period for an agreement to the extent to which, immediately before the starting date, it is—
- (a) void under section 2(1) or 35(1)(a) of the RTPA;
  - (b) the subject of an order under section 2(2) or 35(3) of the RTPA; or
  - (c) unlawful under section 1, 2 or 11 of the RPA or void under section 9 of that Act.
- (2) There is no transitional period for an agreement to the extent to which, before the starting date, a person has acted unlawfully for the purposes of section 27ZA(2) or (3) of the RTPA in respect of the agreement.

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- (3) There is no transitional period for an agreement to which paragraph 25(4) applies.
- (4) There is no transitional period for—
  - (a) an agreement in respect of which there are continuing proceedings, or
  - (b) an agreement relating to goods in respect of which there are continuing proceedings,
 to the extent to which the agreement is, when the proceedings are determined, void or unlawful.

*Continuing proceedings under the RTPA*

- 21 In the case of an agreement which is the subject of continuing proceedings under the RTPA, the transitional period begins—
  - (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.

*Continuing proceedings under the RPA*

- 22 (1) In the case of an agreement relating to goods which are the subject of continuing proceedings under the RPA, the transitional period for the exempt provisions of the agreement begins—
  - (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.
- (2) In sub-paragraph (1) “exempt provisions” has the meaning given by paragraph 14(3).

*Provisions not contrary to public interest*

- 23 (1) To the extent to which an agreement contains provisions which, immediately before the starting date, are provisions which the Court has found not to be contrary to the public interest, the transitional period lasts for five years.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) To the extent to which an agreement which on the starting date is the subject of continuing proceedings is, when the proceedings are determined, found by the Court not to be contrary to the public interest, the transitional period lasts for five years.

*Goods*

- 24 (1) In the case of an agreement relating to goods which, immediately before the starting date, are exempt under section 14 of the RPA, there is a transitional period for the agreement to the extent to which it consists of exempt provisions.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) In the case of an agreement relating to goods—
  - (a) which on the starting date are the subject of continuing proceedings, and
  - (b) which, when the proceedings are determined, are found to be exempt under section 14 of the RPA,
 there is a transitional period for the agreement, to the extent to which it consists of exempt provisions.

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- (4) In each case, the transitional period lasts for five years.
- (5) In sub-paragraphs (1) and (3) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
  - (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.

*Transitional period for certain agreements*

- 25 (1) This paragraph applies to agreements—
- (a) which are subject to registration under the RTPA but which—
    - (i) are not non-notifiable agreements within the meaning of section 27A of the RTPA, or
    - (ii) are not agreements to which paragraph 5 applies; and
  - (b) in respect of which the time for furnishing relevant particulars as required by or under the RTPA expires on or after the starting date.
- (2) “Relevant particulars” means—
- (a) particulars which are required to be furnished by virtue of section 24 of the RTPA; or
  - (b) particulars of any variation of an agreement which are required to be furnished by virtue of sections 24 and 27 of the RTPA.
- (3) There is a transitional period of one year for an agreement to which this paragraph applies if—
- (a) relevant particulars are furnished before the starting date; and
  - (b) no person has acted unlawfully (for the purposes of section 27ZA(2) or (3) of the RTPA) in respect of the agreement.
- (4) If relevant particulars are not furnished by the starting date, section 35(1)(a) of the RTPA does not apply in relation to the agreement (unless sub-paragraph (5) applies).
- (5) This sub-paragraph applies if a person falling within section 27ZA(2) or (3) of the RTPA has acted unlawfully for the purposes of those subsections in respect of the agreement.

*Special cases*

- 26 (1) In the case of an agreement in respect of which—
- <sup>F584</sup>(a) .....
  - (b) a direction under section 194A(3) of the <sup>M64</sup>Broadcasting Act 1990 (“the 1990 Act”) is in force immediately before the starting date, the transitional period lasts for five years.
- <sup>F585</sup>(2) .....
- (3) Sub-paragraphs (1) <sup>F586</sup>... do not affect the power of—
- <sup>F587</sup>(a) .....
  - (b) the Secretary of State to make a declaration under section 194A of the 1990 Act (as amended by Schedule 2 to this Act), in respect of an agreement for which there is a transitional period.



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#### Textual Amendments

- F584** Sch. 13 para. 26(1)(a) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 19** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F585** Sch. 13 para. 26(2) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 19** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F586** Words in Sch. 13 para. 26(3) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 19** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F587** Sch. 13 para. 26(3)(a) repealed (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 19** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### Marginal Citations

- M64** [1990 c. 42](#).

## CHAPTER IV

### THE UTILITIES

#### *General*

- 27 In this Chapter “the relevant period” means the period beginning with the starting date and ending immediately before the fifth anniversary of that date.

#### *Electricity*

- 28 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of a section 100 order.
- (5) But if an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA

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would not have applied by virtue of a section 100 order, the transitional period ends on the date on which the agreement so ceases.

(6) Sub-paragraph (3) is subject to paragraph 20.

(7) In this paragraph and paragraph 29—

“section 100 order” means an order made under section 100 of the <sup>M65</sup>Electricity Act 1989; and

expressions which are also used in Part I of the Electricity Act 1989 have the same meaning as in that Part.

#### Marginal Citations

M65 1989 c. 29.

#### *Electricity: power to make transitional orders*

- 29 (1) There is a transitional period for an agreement (whether made before or after the starting date) relating to the generation, transmission or supply of electricity which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date on which the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Electricity Supply and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.
- (7) In the application of this paragraph to Northern Ireland, the reference in sub-paragraph (5) to the Director General of Electricity Supply is to be read as a reference to the Director General of Electricity Supply for Northern Ireland.

#### *Gas*

- 30 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.

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- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of section 62 or a section 62 order, there is a transitional period—
  - (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of section 62 or a section 62 order, there is a transitional period—
  - (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of section 62 or a section 62 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of section 62 or a section 62 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) also applies in relation to a modification which is treated as an agreement made on or after 28th November 1985 by virtue of section 62(4).
- (7) Sub-paragraph (3) is subject to paragraph 20.
- (8) In this paragraph and paragraph 31—
 

“section 62” means section 62 of the <sup>M66</sup>Gas Act 1986;

“section 62 order” means an order made under section 62.

**Marginal Citations**

**M66** 1986 c. 44.

*Gas: power to make transitional orders*

- 31
- (1) There is a transitional period for an agreement of a description falling within section 62(2)(a) and (b) or section 62(2A)(a) and (b) which—
    - (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
    - (b) satisfies such conditions as may be specified in the order.
  - (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
  - (3) The transitional period for such an agreement ends at the end of the relevant period.

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- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Gas Supply and the Director.
- (6) The conditions specified in a transitional order may include—
- (a) conditions which are to be satisfied in relation to a time before the coming into force of this paragraph;
  - (b) conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Secretary of State, the Director or the Director General of Gas Supply for determination after such consultation as may be so specified.

*Gas: Northern Ireland*

- 32 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of an Article 41 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of an Article 41 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 33—
- “Article 41 order” means an order under Article 41 of the <sup>M67</sup>Gas (Northern Ireland) Order 1996;

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“Department” means the Department of Economic Development.

**Marginal Citations**

**M67** S.I. 1996/275 (N.I. 2).

*Gas: Northern Ireland – power to make transitional orders*

- 33 (1) There is a transitional period for an agreement of a description falling within Article 41(1) which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Department (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Department must consult the Director General of Gas for Northern Ireland and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

*Railways*

- 34 (1) In this paragraph—
- “section 131” means section 131 of the <sup>M68</sup>Railways Act 1993 (“the 1993 Act”);
- “section 131 agreement” means an agreement—
- (a) to which the RTPA does not apply immediately before the starting date by virtue of section 131(1); or
  - (b) in respect of which a direction under section 131(3) is in force immediately before that date;
- “non-exempt agreement” means an agreement relating to the provision of railway services (whether made before or after the starting date) which is not a section 131 agreement; and
- “railway services” has the meaning given by section 82 of the 1993 Act.
- (2) For a section 131 agreement there is a transitional period of five years.

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- (3) There is a transitional period for a non-exempt agreement to the extent to which the agreement is at any time before the end of the relevant period required or approved—
  - (a) by the Secretary of State or the Rail Regulator in pursuance of any function assigned or transferred to him under or by virtue of any provision of the 1993 Act;
  - (b) by or under any agreement the making of which is required or approved by the Secretary of State or the Rail Regulator in the exercise of any such function; or
  - (c) by or under a licence granted under Part I of the 1993 Act.
- (4) The transitional period conferred by sub-paragraph (3)—
  - (a) is to be taken to have begun on the starting date; and
  - (b) ends at the end of the relevant period.
- (5) Sub-paragraph (3) is subject to paragraph 20.
- (6) Any variation of a section 131 agreement on or after the starting date is to be treated, for the purposes of this paragraph, as a separate non-exempt agreement.

#### Marginal Citations

M68 1993 c. 43.

#### *The regulators*

- 35 (1) Subject to sub-paragraph (3), each of the regulators may exercise, in respect of sectoral matters and concurrently with the Director, the functions of the Director under paragraph 3, 7, 19(3), 36, 37, 38 or 39.
- (2) In sub-paragraph (1) “sectoral matters” means—
  - <sup>F588</sup>(a) .....
  - (b) in the case of the Director General of Gas Supply, the matters referred to in section 36A(3) and (4) of the <sup>M69</sup>Gas Act 1986;
  - (c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the <sup>M70</sup>Electricity Act 1989;
  - (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the <sup>M71</sup>Electricity (Northern Ireland) Order 1992;
  - (e) in the case of the [<sup>F589</sup>Water Services Regulation Authority], the matters referred to in section 31(3) of the <sup>M72</sup>Water Industry Act 1991;
  - (f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the <sup>M73</sup>Railways Act 1993;
  - (g) in the case of the Director General of Gas for Northern Ireland, the matters referred to in Article 23(3) of the <sup>M74</sup>Gas (Northern Ireland) Order 1996.
  - [<sup>F590</sup>(h) in the case of the Civil Aviation Authority, the supply of air traffic services within the meaning given by section 98 of the Transport Act 2000.]
- (3) The power to give directions in paragraph 7(2) is exercisable by the Director only but if the Director is preparing directions which relate to a matter in respect of which a regulator exercises concurrent jurisdiction, he must consult that regulator.

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- (4) Consultations conducted by the Director before the enactment date, with a view to preparing directions which have effect on or after that date, are to be taken to satisfy sub-paragraph (3).
- (5) References to enactments in sub-paragraph (2) are to the enactments as amended by or under this Act.

#### Textual Amendments

- F588** Sch. 13 para. 35(2)(a) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F589** Words in Sch. 13 para. 35(2)(e) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 32\(5\)](#); [S.I. 2005/2714](#), art. 4(f)
- F590** Sch. 13 para. 35(2)(h) inserted (1.2.2001) by [2000 c. 38](#), ss. 97, [Sch. 8 Pt. IV para. 16\(3\)](#) (with s. 106); [S.I. 2001/57](#), art. 3, [Sch. 2 Pt. I](#)

#### Marginal Citations

- M69** [1986 c. 44](#).
- M70** [1989 c. 29](#).
- M71** [S.I. 1992/231 \(N.I.1\)](#).
- M72** [1991 c. 56](#).
- M73** [1993 c. 43](#).
- M74** [S.I. 1996/275 \(N.I.2\)](#).

## CHAPTER V

### EXTENDING THE TRANSITIONAL PERIOD

- 36 (1) A party to an agreement for which there is a transitional period may apply to the Director, not less than three months before the end of the period, for the period to be extended.
- (2) The Director may (on his own initiative or on an application under sub-paragraph (1))
- (a) extend a one-year transitional period by not more than twelve months;
  - (b) extend a transitional period of any period other than one year by not more than six months.
- (3) An application under sub-paragraph (1) must—
- (a) be in such form as may be specified; and
  - (b) include such documents and information as may be specified.
- (4) If the Director extends the transitional period under this paragraph, he must give notice in such form, and to such persons, as may be specified.
- (5) The Director may not extend a transitional period more than once.
- (6) In this paragraph—  
 “person” has the same meaning as in Part I; and



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“specified” means specified in rules made by the Director under section 51.

**Modifications etc. (not altering text)**

**C86** Sch. 13 paras. 36-39 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

## CHAPTER VI

### TERMINATING THE TRANSITIONAL PERIOD

#### *General*

- 37 (1) Subject to sub-paragraph (2), the Director may by a direction in writing terminate the transitional period for an agreement, but only in accordance with paragraph 38.
- (2) The Director may not terminate the transitional period, nor exercise any of the powers in paragraph 38, in respect of an agreement which is excluded from the Chapter I prohibition by virtue of any of the provisions of Part I of this Act other than paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 [<sup>F591</sup>or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000].

**Textual Amendments**

**F591** Words in Sch. 13 para. 37(2) inserted (1.3.2000) by [S.I. 2000/311](#), [art. 2](#)

**Modifications etc. (not altering text)**

**C86** Sch. 13 paras. 36-39 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

#### *Circumstances in which the Director may terminate the transitional period*

- 38 (1) If the Director is considering whether to give a direction under paragraph 37 (“a direction”), he may in writing require any party to the agreement concerned to give him such information in connection with that agreement as he may require.
- (2) If at the end of such period as may be specified in rules made under section 51, a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (1), the Director may give a direction.
- (3) The Director may also give a direction if he considers—
- (a) that the agreement would, but for the transitional period or a relevant exclusion, infringe the Chapter I prohibition; and
  - (b) that he would not be likely to grant the agreement an unconditional individual exemption.
- (4) For the purposes of sub-paragraph (3) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).

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(5) In this paragraph—

“person” has the same meaning as in Part I;

“relevant exclusion” means an exclusion under paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 [<sup>F592</sup>or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000].

#### Textual Amendments

**F592** Words in the definition of “relevant exclusion” in Sch. 13 para. 38(5) inserted (1.9.2000) by [S.I. 2000/2031](#), [art. 2](#)

#### Modifications etc. (not altering text)

**C86** Sch. 13 paras. 36-39 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

#### *Procedural requirements on giving a paragraph 37 direction*

- 39 (1) The Director must specify in a direction under paragraph 37 (“a direction”) the date on which it is to have effect (which must not be less than 28 days after the direction is given).
- (2) Copies of the direction must be given to—
- (a) each of the parties concerned, and
  - (b) the Secretary of State,
- not less than 28 days before the date on which the direction is to have effect.
- (3) In relation to an agreement to which a direction applies, the transitional period (if it has not already ended) ends on the date specified in the direction unless, before that date, the direction is revoked by the Director or the Secretary of State.
- (4) If a direction is revoked, the Director may give a further direction in respect of the same agreement only if he is satisfied that there has been a material change of circumstance since the revocation.
- (5) If, as a result of paragraph 24(1) or (3), there is a transitional period in respect of provisions of an agreement relating to goods—
- (a) which immediately before the starting date are exempt under section 14 of the RPA, or
  - (b) which, when continuing proceedings are determined, are found to be exempt under section 14 of the RPA,
- the period is not affected by paragraph 37 or 38.

#### Modifications etc. (not altering text)

**C86** Sch. 13 paras. 36-39 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

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## PART V

### THE FAIR TRADING ACT 1973

#### *References to the Monopolies and Mergers Commission*

- 40 (1) If, on the date on which the repeal by this Act of a provision mentioned in sub-paragraph (2) comes into force, the Monopolies and Mergers Commission has not completed a reference which was made to it before that date, continued consideration of the reference may include consideration of a question which could not have been considered if the provision had not been repealed.
- (2) The provisions are—
- (a) sections 10(2), 54(5) and 78(3) and paragraph 3(1) and (2) of Schedule 8 to the Fair Trading Act 1973 (c. 41);
  - (b) section 11(8)(b) of the Competition Act 1980 (c. 21);
  - (c) section 14(2) of the Telecommunications Act 1984 (c. 12);
  - (d) section 45(3) of the Airports Act 1986 (c. 31);
  - (e) section 25(2) of the Gas Act 1986 (c. 44);
  - (f) section 13(2) of the Electricity Act 1989 (c. 29);
  - (g) section 15(2) of the Water Industry Act 1991 (c. 56);
  - (h) article 16(2) of the <sup>M75</sup>Electricity (Northern Ireland) Order 1992;
  - (i) section 14(2) of the Railways Act 1993 (c. 43);
  - (j) article 36(3) of the <sup>M76</sup>Airports (Northern Ireland) Order 1994;
  - (k) article 16(2) of the <sup>M77</sup>Gas (Northern Ireland) Order 1996.

#### **Marginal Citations**

**M75** S.I. 1992/231 (N.I. 1).

**M76** S.I. 1994/426 (N.I. 1).

**M77** S.I. 1996/275 (N.I. 2).

#### *Orders under Schedule 8*

- 41 (1) In this paragraph—
- “the 1973 Act” means the <sup>M78</sup>Fair Trading Act 1973;
  - “agreement” means an agreement entered into before the date on which the repeal of the limiting provisions comes into force;
  - “the order” means an order under section 56 or 73 of the 1973 Act;
  - “the limiting provisions” means sub-paragraph (1) or (2) of paragraph 3 of Schedule 8 to the 1973 Act (limit on power to make orders under paragraph 1 or 2 of that Schedule) and includes any provision of the order included because of either of those sub-paragraphs; and
  - “transitional period” means the period which—
    - (a) begins on the day on which the repeal of the limiting provisions comes into force; and
    - (b) ends on the first anniversary of the starting date.

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- (2) Sub-paragraph (3) applies to any agreement to the extent to which it would have been unlawful (in accordance with the provisions of the order) but for the limiting provisions.
- (3) As from the end of the transitional period, the order is to have effect in relation to the agreement as if the limiting provisions had never had effect.

**Marginal Citations**

**M78** 1973 c. 41.

*Part III of the Act*

- 42 (1) The repeals made by section 1 do not affect any proceedings in respect of an application which is made to the Court under Part III of the <sup>M79</sup>Fair Trading Act 1973, but is not determined, before the starting date.
- (2) The question whether (for the purposes of sub-paragraph (1)) an application has been determined is to be decided in accordance with sub-paragraphs (3) and (4).
- (3) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (4) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.
- (5) Any amendment made by Schedule 12 to this Act which substitutes references to a relevant Court for references to the Court is not to affect proceedings of the kind referred to in sub-paragraph (1).

**Marginal Citations**

**M79** 1973 c. 41.

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## PART VI

### THE COMPETITION ACT 1980

#### *Undertakings*

- 43 (1) Subject to sub-paragraph (2), an undertaking accepted by the Director under section 4 or 9 of the <sup>M80</sup>Competition Act 1980 ceases to have effect on the coming into force of the repeal by this Act of that section.
- (2) If the undertaking relates to an agreement which on the starting date is the subject of continuing proceedings, the undertaking continues to have effect for the purposes of section 29 of the Competition Act 1980 until the proceedings are determined.

#### **Marginal Citations**

**M80** 1980 c. 21.

#### *Application of sections 25 and 26*

- 44 The repeals made by section 1 do not affect—
- (a) the operation of section 25 of the Competition Act 1980 in relation to an application under section 1(3) of the RTPA which is made before the starting date;
  - (b) an application under section 26 of the Competition Act 1980 which is made before the starting date.

## PART VII

### MISCELLANEOUS

#### *Disclosure of information*

- 45 (1) Section 55 of this Act applies in relation to information which, immediately before the starting date, is subject to section 41 of the RTPA as it applies in relation to information obtained under or as a result of Part I.
- (2) But section 55 does not apply to any disclosure of information of the kind referred to in sub-paragraph (1) if the disclosure is made—
- (a) for the purpose of facilitating the performance of functions of a designated person under the <sup>M81</sup>Control of Misleading Advertisements Regulations 1988; or
  - (b) for the purposes of any proceedings before the Court or of any other legal proceedings under the RTPA or the <sup>M82</sup>Fair Trading Act 1973 or the Control of Misleading Advertisements Regulations 1988.
- (3) Section 56 applies in relation to information of the kind referred to in sub-paragraph (1) if particulars containing the information have been entered or filed on the special section of the register maintained by the Director under, or as a result of, section 27 of the RTPA or paragraph 10 of this Schedule.

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- (4) Section 55 has effect, in relation to the matters as to which section 41(2) of the RTPA had effect, as if it contained a provision similar to section 41(2).

#### Marginal Citations

**M81** [S.I. 1988/915](#).

**M82** [1973 c. 41](#).

#### *The Court*

- 46 If it appears to the Lord Chancellor that a person who ceases to be a non-judicial member of the Court as a result of this Act should receive compensation for loss of office, he may pay to him out of moneys provided by Parliament such sum as he may with the approval of the Treasury determine.

### SCHEDULE 14

Section 74(3).

#### REPEALS AND REVOCATIONS

#### PART I

#### REPEALS

#### Commencement Information

**I38** Sch. 14 Pt. I partly in force; Sch. 14 Pt. I not in force at Royal Assent see s. 76(3); Sch. 14 Pt. I in force for certain purposes at 11.1.1999 by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#); Sch. 14 Pt. I in force for certain purposes at 1.4.1999 by [S.I. 1999/505](#), [art. 2](#), [Sch. 2](#); Sch. 14 Pt. I in force for certain purposes at 10.11.1999 by [S.I. 1999/2859](#), [art. 2](#); Sch. 14 Pt. I (except the repeal of Restrictive Practices Court Act 1976) in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

**I39** Sch. 14 Pt. I in force at 10.3.2013 in so far as not already in force by [S.I. 2013/284](#), [art. 2\(c\)](#)

Chapter	Short title	Extent of repeal
1973 c. 41.	The Fair Trading Act 1973.	Section 4. Section 10(2). Section 45. Section 54(5). Section 78(3). In section 81(1), in the words before paragraph (a), from “and the Commission” to “of this Act”); in paragraph (b), “or the Commission, as the case may be” and “or

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		of the Commission”; in subsection (2), “or the Commission” and “or of the Commission” and in subsection (3), from “and, in the case,” to “85 of this Act”, and “or the Commission, as the case may be,”.
		In section 83, in subsection (1) “Subject to subsection (1A) below” and subsection (1A).
		In section 135(1), in the words before paragraph (a) and in paragraph (b), “or the Commission”, and paragraph (a).
		Schedule 3.
		In Schedule 8, paragraph 3(1) and (2).
1976 c. 33.	The Restrictive Practices Court Act 1976.	The whole Act.
1976 c. 34.	The Restrictive Trade Practices Act 1976.	The whole Act.
1976 c. 53.	The Resale Prices Act 1976.	The whole Act.
1976 c. 76.	The Energy Act 1976.	Section 5.
1977 c. 19.	The Restrictive Trade Practices Act 1977.	The whole Act.
1977 c. 37.	The Patents Act 1977.	Sections 44 and 45.
1979 c. 38.	The Estate Agents Act 1979.	In section 10(3), “or the Restrictive Trade Practices Act 1976.”
1980 c. 21.	The Competition Act 1980.	Sections 2 to 10. In section 11(8), paragraph (b) and the “and” immediately before it. In section 13(1), from “but the giving” to the end. In section 15, subsections (2) (b), (3) and (4). Section 16(3). In section 17, “8(1)” in subsections (1) and (3) to (5)



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		and in subsection (2) “8(1) or”.
		In section 19(3), paragraph (d).
		In section 19(5)(a), “or in anything published under section 4(2)(a) above”.
		Section 22.
		Sections 25 to 30.
		In section 31, subsection (2) and “10” in subsection (3).
		Section 33(3) and (4).
1984 c. 12.	The Telecommunications Act 1984.	Section 14(2).
		In section 16(5), the “or” immediately after paragraph (a).
		In section 50(4), paragraph (c) and the “and” immediately after it.
		In section 50(5), “or (3)”.
		In section 50(7), “or the 1980 Act”.
		In section 95(1), “or section 10(2)(a) of the 1980 Act”.
		In section 95(2), paragraph (c) and the “or” immediately before it.
		In section 95(3), “or the 1980 Act”.
		In section 101(3), paragraphs (d) and (e).
1986 c. 31.	The Airports Act 1986.	Section 45(3).
		In section 54(1), “or section 10(2)(a) of the 1980 Act”.
		In section 54(3), paragraph (c) and the “or” immediately before it.
		In section 54(4), “or the 1980 Act”.

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1986 c. 44.	The Gas Act 1986.	<p>In section 56(a)(ii), “or the 1980 Act”.</p> <p>Section 25(2).</p> <p>In section 27(1), “or section 10(2)(a) of the Competition Act 1980”.</p> <p>In section 27(3)(a), from “or” to “competition reference”.</p> <p>In section 27(6), “or the said Act of 1980”.</p> <p>In section 28(5), the “or” immediately after paragraph (aa).</p> <p>In section 36A(5), paragraph (d) and the “and” immediately before it.</p> <p>In section 36A(6), “or (3)”.</p> <p>In section 36A(8), “or under the 1980 Act”.</p> <p>In section 36A(9), “or the 1980 Act”.</p> <p>In section 42(3), paragraphs (e) and (f).</p>
1986 c. 60.	The Financial Services Act 1986.	Section 126.
1987 c. 43.	The Consumer Protection Act 1987.	In section 38(3), paragraphs (e) and (f).
1987 c. 53.	The Channel Tunnel Act 1987.	<p>In section 33(2), paragraph (c) and the “and” immediately before it.</p> <p>In section 33(5), paragraphs (b) and (c).</p>
1988 c. 54.	The Road Traffic (Consequential Provisions) Act 1988.	In Schedule 3, paragraph 19.
1989 c. 15.	The Water Act 1989.	In section 174(3), paragraphs (d) and (e).
1989 c. 29.	The Electricity Act 1989.	<p>Section 13(2).</p> <p>In section 15(1), paragraph (b) and the “or” immediately before it.</p>

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		In section 15(2), paragraph (c) and the “or” immediately before it.
		In section 15(3), “or the 1980 Act”.
		In section 25(5), the “or” immediately after paragraph (b).
		In section 43(4), paragraph (c) and the “and” immediately after it.
		In section 43(5), “or (3)”.
		In section 43(7), “or the 1980 Act”.
		In section 57(3), paragraphs (d) and (e).
1989 c. 40.	The Companies Act 1989.	In Schedule 20, paragraphs 21 to 24.
1990 c. 42.	The Broadcasting Act 1990.	In section 193(2), paragraph (c) and the “and” immediately before it.  In section 193(4), “or the Competition Act 1980”.
1991 c. 56.	The Water Industry Act 1991.	In section 12(5), “or the 1980 Act”.  Section 15(2).  In section 17(1), paragraph (b) and the “or” immediately before it.  In section 17(2), paragraph (c) and the “or” immediately before it.  In section 17(4), “or the 1980 Act”.  In section 31(4), paragraph (c) and the “and” immediately before it.  In section 31(5), “or in subsection (3) above”.  In section 31(6), “or in subsection (3) above”.  In section 31(7), “or (3)”.

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		In section 31(9), “or the 1980 Act”.
		In Part II of Schedule 15, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1991 c. 57.	The Water Resources Act 1991.	In Part II of Schedule 24, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1993 c. 21.	The Osteopaths Act 1993.	In section 33(4), paragraph (b) and the “or” immediately before it. In section 33(5), “or section 10 of the Act of 1980”.
1993 c. 43.	The Railways Act 1993.	Section 14(2). In section 16(1), paragraph (b) and the “or” immediately before it. In section 16(2), paragraph (c) and the “or” immediately before it. In section 16(5), “or the 1980 Act”. In section 67(4), paragraph (c) and the “and” immediately after it. In section 67(6)(a), “or (3)”. In section 67(9), “or under the 1980 Act”.
		Section 131. In section 145(3), paragraphs (d) and (e).
1994 c. 17.	The Chiropractors Act 1994.	In section 33(4), paragraph (b) and the “or” immediately before it. In section 33(5), “or section 10 of the Act of 1980”.
1994 c. 21.	The Coal Industry Act 1994.	In section 59(4), paragraphs (e) and (f).

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1994 c. 40.	The Deregulation and Contracting Out Act 1994.	Sections 10 and 11.  In section 12, subsections (1) to (6). In Schedule 4, paragraph 1. In Schedule 11, in paragraph 4, sub-paragraphs (3) to (6).
1996 c. 55.	The Broadcasting Act 1996.	Section 77(2).

## PART II

### REVOCATIONS

#### Commencement Information

**I40** Sch. 14 Pt. II wholly in force; Sch. 14 Pt. II not in force at Royal Assent see s. 76(3); Sch. 14 Pt. II in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; Sch. 14 Pt. II fully in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

Reference	Title	Extent of revocation
S.I. 1981/1675 (N.I.26).	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraphs 42 and 43.
S.I. 1982/1080 (N.I.12).	The Agricultural Marketing (Northern Ireland) Order 1982.	In Schedule 8, the entry relating to paragraph 16(2) of Schedule 3 to the Fair Trading Act 1973 and in the entry relating to the Competition Act 1980, "and 15(3)".
S.I. 1986/1035 (N.I.9).	The Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986.	In Part II of Schedule 1, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
S.I. 1992/231 (N.I.1).	The Electricity (Northern Ireland) Order 1992.	Article 16(2).  In Article 18— (a) in paragraph (1), sub-paragraph (b) and the "or" immediately before it; (b) in paragraph (2), sub-paragraph (c) and the "or" immediately before it;

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S.I. 1994/426 (N.I.1).	The Airports (Northern Ireland) Order 1994.	(c) in paragraph (3) “or the 1980 Act”. In Article 28(5), the “or” immediately after sub-paragraph (b). In Article 46— (a) in paragraph (4), sub-paragraph (c) and the “and” immediately after it; (b) in paragraph (5), “or (3)”; (c) in paragraph (7), “or the 1980 Act”. Article 61(3)(f) and (g). In Schedule 12, paragraph 16. Article 36(3). In Article 45— (a) in paragraph (1), “or section 10(2)(a) of the 1980 Act”; (b) in paragraph (3), sub-paragraph (c) and the “or” immediately before it; (c) in paragraph (4), “or the 1980 Act”. In Article 47(a)(ii), “or the 1980 Act”. In Schedule 9, paragraph 5.
S.I. 1996/275 (N.I.2).	The Gas (Northern Ireland) Order 1996.	Article 16(2). In Article 18— (a) in paragraph (1), sub-paragraph (b) and the “or” immediately before it; (b) in paragraph (3), sub-paragraph (c) and the “or” immediately before it; (c) in paragraph (5), “or the 1980 Act”. In Article 19(5), the “or” immediately after sub-paragraph (b). In Article 23— (a) in paragraph (4), sub-paragraph (d) and the “and” immediately before it; (b) in paragraph (5), “or (3)”; (c) in paragraph (7), “or the 1980 Act”.

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(c) in paragraph (7), “or  
under the 1980 Act”;  
(d) in paragraph (8), “or the  
1980 Act”.

Article 44(4)(f) and (g).

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