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 [F1 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)
Pt. 1 certain functions made exercisable concurrently by S.I. 1996/275 (N.I. 1) art. 23(3) (as Pt. 1 certain functions made exercisable concurrently (1.4.2007) by Pt. 1 certain functions made exercisable concurrently by S.I. 1992/231 (N.I. 1) art. 46(3) (as Pt. 1 certain functions made exercisable concurrently (1.4.2007) by Pt. 1 restricted (1.5.2004) by Pt. 1 c.

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

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 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. 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)(a)(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)
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).

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).
Competition Act 1998 (c. 41)
Part I – Competition
Chapter I – Agreements

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Competition Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(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”.

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).

(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—
      (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 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.

Exemptions

4 Individual exemptions.

[F2(1) The [F3OFT] 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 [F3it] 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 [F3OFT] considers it appropriate to impose; and

(b) has effect for such period as the [F3OFT] 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 [F3OFT] may extend the period for which an exemption has effect; but, if the rules so provide, [F3it] may do so only in specified circumstances.]
5 Cancellation etc. of individual exemptions.

[F7](1) If the [F8]OFT has reasonable grounds for believing that there has been a material change of circumstance since [F8]it granted an individual exemption, [F8]it 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 [F8]OFT has a reasonable suspicion that the information on which [F8]it based [F9]its decision to grant an individual exemption was incomplete, false or misleading in a material particular, [F8]it 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 [F8]OFT, by notice in writing, to take any of the steps mentioned in subsection (1).

(5) Any step taken by the [F8]OFT 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 [F8]OFT may act under subsection (1), (2) or (4) on [F8]its own initiative or on a complaint made by any person.]

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.)

6 Block exemptions.

(1) If agreements which fall within a particular category of agreement are, in the opinion of the [F9]CMA, likely to be [F8]exempt agreements, the [F9]CMA 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 CMA may, by notice in writing, cancel the block exemption in respect of the agreement;
   (c) that if the CMA considers that a particular agreement is not an exempt agreement, it 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.

(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

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<tr>
<td><strong>F9</strong></td>
<td>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.)</td>
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<td><strong>F10</strong></td>
<td>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)</td>
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<td><strong>F11</strong></td>
<td>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)</td>
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<td><strong>F12</strong></td>
<td>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.)</td>
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<td><strong>F13</strong></td>
<td>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)</td>
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7 Block exemptions: opposition.

(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 CMA 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 CMA—
   (a) is opposed to its being so treated; and
(b) gives notice in writing to the party concerned of \[^{\text{F15}}\text{its}\] opposition before the end of that period.

(3) If the \[^{\text{F15}}\text{OFT}\] gives notice of \[^{\text{F15}}\text{its}\] 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 \[^{\text{F15}}\text{OFT}\] 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 \[^{\text{F16}}\text{CMA}\] must—
   (a) publish details of \[^{\text{F17}}\text{its}\] proposed recommendation in such a way as \[^{\text{F17}}\text{it}\] 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 \[^{\text{F17}}\text{it}\].

(2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the \[^{\text{F16}}\text{CMA}\] of the proposed modifications and take into account any comments made by the \[^{\text{F16}}\text{CMA}\].

(3) If, in the opinion of the \[^{\text{F16}}\text{CMA}\], it is appropriate to vary or revoke a block exemption order \[^{\text{F18}}\text{it}\] 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 \[^{\text{F17}}\text{its}\] 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 \[^{\text{F16}}\text{CMA}\] of the proposed variation or revocation; and
   (b) take into account any comments made by the \[^{\text{F16}}\text{CMA}\].

(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.)
9  Exempt agreements.
   (1) 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;
       (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.
   (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 the European Union
       prohibition—
       (a) by virtue of a Regulation, 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 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 [F25the 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 [F25the 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 [F27CMA] 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 [F28CMA] has the effect of cancelling the exemption.

(8) In exercising [F29its] powers under this section, the [F30CMA] may require any person who is a party to the agreement in question to give [F29it] such information as [F29it] may require.

(9) For the purpose of this section references to an agreement being exempt from [F25the European Union] prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation [F31other than the EC Competition Regulation] or a decision by the Commission.

(10) In this section—
   “[F25the European Union] prohibition” means the prohibition contained in—
   (a) [F32Article 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
   “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 [F25the European Union] prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.
11 Exemption for certain other agreements.

(1) The fact that a ruling may be given by virtue of \[F33\]Article 104\] of the Treaty on the question whether or not agreements of a particular kind are prohibited by \[F33\]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))

12 Requests for \[F334\]OFT\] to examine agreements.

\[F335\](1) Sections 13 and 14 provide for an agreement to be examined by the \[F334\]OFT\] 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 \[F334\]OFT\], 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 \[F334\]OFT\]—

(a) has given a direction withdrawing an exclusion; or

(b) is considering whether to give such a direction.
13 Notification for guidance.

(1) A party to an agreement who applies for the agreement to be examined under this section must—
   (a) notify the OFT of the agreement; and
   (b) apply to the OFT for guidance.

(2) On an application under this section, the OFT may give the applicant guidance as to whether or not, in its view, the agreement is likely to infringe the Chapter I prohibition.

(3) If the OFT considers that the agreement is likely to infringe the prohibition if it is not exempt, its 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 it would be likely to grant the agreement an individual exemption if asked to do so.

(4) If an agreement to which the prohibition applies has been notified to the OFT 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 OFT 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.]
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 [F37]OFT of the agreement; and

(b) apply to [F37]the OFT for a decision.

(2) On an application under this section, the [F37]OFT 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 [F37]OFT 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 [F37]OFT 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 [F37]OFT 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))

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)

C24 S. 14 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 5

15 Effect of guidance.

[F38](1) This section applies to an agreement if the [F38]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) [F38]it would be likely to grant the agreement an individual exemption if asked to do so.

(2) The [F38]OFT is to take no further action under this Part with respect to an agreement to which this section applies, unless—
(a) if it has reasonable grounds for believing that there has been a material change of circumstance since it gave its guidance;

(b) it has a reasonable suspicion that the information on which it based its guidance was incomplete, false or misleading in a material particular;

(c) one of the parties to the agreement applies to it for a decision under section 14 with respect to the agreement; or

(d) a complaint about the agreement has been made to 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 OFT may remove the immunity given by subsection (3) if—

(a) it takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);

(b) it considers it likely that the agreement will infringe the prohibition; and

(c) it gives notice in writing to the party on whose application the guidance was given that it is removing the immunity as from the date specified in its notice.

(5) If the OFT has a reasonable suspicion that information—

(a) on which it based its guidance, and

(b) which was provided to 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.

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

This section applies to an agreement if the OFT has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.

(2) The OFT is to take no further action under this Part with respect to the agreement unless—

(a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or

(b) it has a reasonable suspicion that the information on which it based 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 [F39OFT] may remove the immunity given by subsection (3) if—
   (a) [F39it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
   (b) [F39it] considers that it is likely that the agreement will infringe the prohibition; and
   (c) [F39it] gives notice in writing to the party on whose application the decision was made that [F39it] is removing the immunity as from the date specified in [F39its] notice.

(5) If the [F39OFT] has a reasonable suspicion that information—
   (a) on which [F39it] based [F39its] decision, and
   (b) which was provided to [F39it] 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.]
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”.

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 [F40 OFT] 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 [F40 OFT] 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 [F40 OFT], 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))

### Notification for guidance.

[F41](1) A person who applies for conduct to be considered under this section must—

(a) notify the [F42 OFT] of it; and

(b) apply to the [F42 OFT] for guidance.

(2) On an application under this section, the [F42 OFT] may give the applicant guidance as to whether or not, in its 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.)

### Notification for a decision.

[F41](1) A person who applies for conduct to be considered under this section must—

(a) notify the [F43 OFT] of it; and

(b) apply to the [F43 OFT] for a decision.

(2) On an application under this section, the [F43 OFT] 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.
23  Effect of guidance.

[F41 (1) This section applies to conduct if the \[F44 \text{OFT}\] has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.

(2) The \[F44 \text{OFT}\] is to take no further action under this Part with respect to the conduct to which this section applies, unless—

(a) \[F44 \text{it}\] has reasonable grounds for believing that there has been a material change of circumstance since \[F44 \text{it}\] gave \[F44 \text{its}\] guidance;

(b) \[F44 \text{it}\] has a reasonable suspicion that the information on which \[F44 \text{it}\] based \[F44 \text{its}\] guidance was incomplete, false or misleading in a material particular; or

(c) a complaint about the conduct has been made to \[F44 \text{it}\].

(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 \[F44 \text{OFT}\] may remove the immunity given by subsection (3) if—

(a) \[F44 \text{it}\] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);

(b) \[F44 \text{it}\] considers that it is likely that the conduct will infringe the prohibition; and

(c) \[F44 \text{it}\] gives notice in writing to the undertaking on whose application the guidance was given that \[F44 \text{it}\] is removing the immunity as from the date specified in \[F44 \text{its}\] notice.

(5) If the \[F44 \text{OFT}\] has a reasonable suspicion that information—

(a) on which \[F44 \text{it}\] based \[F44 \text{its}\] guidance, and

(b) which was provided to \[F44 \text{it}\] 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.]
24 Effect of a decision that the Chapter II prohibition has not been infringed.

(1) This section applies to conduct if the OFT has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.

(2) The OFT is to take no further action under this Part with respect to the conduct unless—

(a) it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or

(b) it has a reasonable suspicion that the information on which it based 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 OFT may remove the immunity given by subsection (3) if—

(a) it takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2); and

(b) it considers that it is likely that the conduct will infringe the prohibition;

(c) it gives notice in writing to the undertaking on whose application the decision was made that it is removing the immunity as from the date specified in its notice.

(5) If the OFT has a reasonable suspicion that information—

(a) on which it based its decision, and

(b) which was provided to 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.]
(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 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 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 the European Union.

(8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the 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
   (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 CMA—
   (a) considers that the agreement is an agreement to which the prohibition in 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 CMA 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 CMA considers that, at the time in question, the agreement was an agreement to which the prohibition in 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

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;
(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.]
Investigations: powers to require documents and information

(1) For the purposes of an investigation \[\text{under section 25,}\] the CMA may require any person to produce a specified document, or to provide with specified information, which 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 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 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.
26A  Investigations: power to ask questions

(1) For the purposes of an investigation, the CMA may give notice to an individual who has a connection with a relevant undertaking requiring the individual to answer questions with respect to any matter relevant to the investigation—
   (a) at a place specified in the notice, and
   (b) either at a time so specified or on receipt of the notice.

(2) The CMA must give a copy of the notice under subsection (1) to each relevant undertaking with which the individual has a current connection at the time the notice is given to the individual.

(3) The CMA must take such steps as are reasonable in all the circumstances to comply with the requirement under subsection (2) before the time at which the individual is required to answer questions.

(4) Where the CMA does not comply with the requirement under subsection (2) before the time mentioned in subsection (3), it must comply with that requirement as soon as practicable after that time.

(5) A notice under subsection (1) must be in writing and must indicate—
   (a) the subject matter and purpose of the investigation, and
   (b) the nature of the offence created by section 44.

(6) For the purposes of this section—
   (a) an individual has a connection with an undertaking if he or she is or was—
      (i) concerned in the management or control of the undertaking, or
      (ii) employed by, or otherwise working for, the undertaking, and
   (b) an individual has a current connection with an undertaking if, at the time in question, he or she is so concerned, is so employed or is so otherwise working.

(7) In this section, a “relevant undertaking” means an undertaking whose activities are being investigated as part of the investigation in question.]
27 [Power to enter business premises without a warrant] [F61]

(1) Any officer of the CMA who is authorised in writing by the CMA to do so (“an investigating officer”) may enter any business premises in connection with an investigation 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 CMA has a reasonable suspicion that the premises are, or have been, occupied by—

(i) a party to an agreement which is investigating section 25; or
(ii) an undertaking the conduct of which is investigating under 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 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

(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 considers relates to any matter relevant to the investigation.

(F71) In this section “business premises” means premises (or any part of premises) not used as a dwelling.
28  [*F73*Power to enter business premises under a warrant].

(1) [*F74*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 [*F75*any business premises] documents—
   (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 [*F76*any business premises] documents which the [*F77*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

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**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 (1.5.2004) 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)(c) inserted (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)(c) 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)

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

C29  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.)


C31  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)
(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 [F78CMA], and any other of [F79the "CMA's" officers whom the [F78CMA]] 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 [F81stored 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 [F82or 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), [F83the 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.

[F84(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.

(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.

[F85(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.

[F36(8) In this section “business premises” has the same meaning as in section 27.]
Power to enter domestic premises under a warrant

(1) [F88 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 [F89 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 [F89 CMA], and any other of its officers whom the [F89 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 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), [F88 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.

(8A) An application for a warrant under this section must be made—

(a) in the case of an application to the court, in accordance with rules of court;

(b) in the case of an application to the Tribunal, in accordance with Tribunal rules.

(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.

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**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.)

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


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

(1) A warrant issued under section 28 [F92 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 [F93 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.

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—
   (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)

C29 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.)


C40 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)

[FS9 30A Use of statements in prosecution

[FS9 (1)] A statement made by a person in response to a requirement imposed by virtue of any of sections [FS9 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.

[FS9 (2)] A statement by an individual in response to a requirement imposed by virtue of section 26A (a “section 26A statement”) may only be used in evidence against the individual—

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

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

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

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

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

(a) concerned in the management or control of the undertaking, or
(b) employed by, or otherwise working for, the undertaking.

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.)
Decisions following an investigation.

(1) If as a result of an investigation the CMA proposes to make a decision, the 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.

(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the CMA—
   (a) that the Chapter I prohibition has been infringed;
   (b) that the Chapter II prohibition has been infringed;
   (c) that the prohibition in Article 101(1) has been infringed; or
   (d) that the prohibition in Article 102 has been infringed.

Commitments

(1) Subsection (2) applies in a case where the 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 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 CMA may accept from the person (or persons) who gave the commitments—
   (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 CMA where—
      (i) it is requested to do so by the person (or persons) who gave the commitments; or

Textual Amendments

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

Word in s. 31(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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))

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))
(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.

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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

F103 Words in ss. 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.)

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

(1) Subsection (2) applies if the \[F104]CMA\] has accepted commitments under section 31A (and has not released them).

(2) In such a case, the \[F104]CMA\] 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 \[F104]CMA\] 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 \[F104]CMA\] 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 \[F104]CMA\] 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.)
[F102 31C Review of commitments

(1) Where the [F106 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 [F106 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.)

[F102 31D Guidance

(1) The [F106 CMA] must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.

(2) The [F106 CMA] may at any time alter the guidance.

(3) If the guidance is altered, the [F106 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 [F107 CMA] may, after consulting the Secretary of State, choose how it publishes its guidance.

(6) If the [F107 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 [F108 CMA] must have regard to the guidance for the time being in force 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

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.)
Enforcement of commitments

(1) If a person from whom the CMA has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the 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
   (b) 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—
   (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”.

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

(1) The Secretary of State may by order impose time-limits in relation to—
   (a) the conduct by the CMA of investigations or investigations of a description specified in the order;
   (b) the making by the CMA of decisions (within the meaning given by section 31(2)) as a result of investigations or investigations of such a description.

(2) Before making an order under subsection (1), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.

Directions in relation to agreements.

(1) If the CMA has made a decision that an agreement infringes the Chapter I prohibition or that it infringes the prohibition in Article 101(1), it may
A direction under this section must be given in writing.

requiring the parties to the agreement to modify the agreement; or
requiring them to terminate the agreement.

If the

A direction under this section must be given in writing.

requiring the person concerned to modify the conduct in question; or
requiring him to cease that conduct.

A direction under this section may, in particular, include provision—
initiative or on an application made to

appropriate to bring the infringement to an end.

give to such person or persons as \[F^{14}][it] considers appropriate such directions as \[F^{14}][it]
considers appropriate to bring the infringement to an end.

(2) \[F^{14}][Subsection (1) applies whether the \[F^{14}][OFT]'s decision is made on \[F^{14}][its] own
initiative or on an application made to \[F^{14}][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.)

33  Directions in relation to conduct.

(1) If the \[F^{14}][CMA] has made a decision that conduct infringes the Chapter II prohibition \[F^{14}][or that it infringes the prohibition in]\[F^{14}][Article 102], \[F^{12}[it] may give to such
person or persons as \[F^{12}[it] considers appropriate such directions as \[F^{12}[it] considers
appropriate to bring the infringement to an end.

(2) \[F^{12}[Subsection (1) applies whether the \[F^{12}[OFT]'s decision is made on \[F^{12}[its] own
initiative or on an application made to \[F^{12}[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.)
Enforcement of directions.

(1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the 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
   (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”.

Interim measures.

Subject to subsections (8) and (9), this section applies if the CMA has begun an investigation under section 25 and not completed it (but only applies so long as the CMA has power under section 25 to conduct that investigation).

(2) If the CMA considers that it is necessary for it to act under this section as a matter of urgency for the purpose—
   (a) of preventing significant damage to a particular person or category of person, or
   (b) of protecting the public interest,

1. Textual Amendments

   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.)

   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.)
(b) commitments accepted under section 31A, but, subject to that, has effect while this section applies.

(6) In the \[^{F129}\] 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 \[^{F130}\] cases mentioned in section 25(4) and (5)], sections 33(3) and 34 also apply to directions given under this section.

\[^{F131}\] (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 \[^{F132}\] 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 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 \[^{F132}\] 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 that the suspected agreement is an agreement to which the prohibition in \[^{F133}\] Article 101(1) is inapplicable because the agreement satisfies the conditions in \[^{F133}\] Article 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 the \[^{F25}\] European Union.

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### 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), ss. 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)
36  [F134]Penalties.

(1) On making a decision that an agreement has infringed the Chapter I prohibition [F135]or that it has infringed the prohibition in 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 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—
      (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 [F144]CMA 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 [F144]CMA under this section are to be paid into the Consolidated Fund.
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 CMA may recover from the undertaking, as a civil debt due to the CMA, 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.

The appropriate level of a penalty.

(1) The CMA must prepare and publish guidance as to the appropriate amount of any penalty under this Part 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.
(1A) The guidance must include provision about the circumstances in which, in determining [F148 such a penalty], the [F146 CMA] may take into account effects in another Member State of the agreement or conduct concerned.

(2) The [F146 CMA] may at any time alter the guidance.

(3) If the guidance is altered, the [F146 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 [F146 CMA] may, after consulting the Secretary of State, choose how [F151 it] publishes [F151 its] guidance.

(6) If the [F150 CMA] is preparing or altering guidance under this section [F151 it] must consult such persons as [F151 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 [F152 in respect of an infringement of a kind mentioned in subsection (1)], the [F150 CMA][F154 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 [F150 CMA], [F153 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;

(d) the Supreme Court.]
39 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) so far as that provision relates to decisions about infringement of the Chapter I prohibition; but the CMA may withdraw that immunity under subsection (4).

(4) If the CMA has investigated a small agreement, it may make a decision withdrawing the immunity given by subsection (3) if, as a result of its investigation, it considers that the agreement is likely to infringe the Chapter I prohibition.

(5) The CMA must give each of the parties in respect of which immunity is withdrawn written notice of 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.

(8) In determining the withdrawal date, the CMA 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.
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) if its conduct is conduct of minor significance; but the CMA may withdraw that immunity under subsection (4).

(4) If the CMA has investigated conduct of minor significance, it may make a decision withdrawing the immunity given by subsection (3) if, as a result of its investigation, it considers that the conduct is likely to infringe the Chapter II prohibition.

(5) The CMA must give the person, or persons, whose immunity has been withdrawn written notice of 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.

(8) In determining the withdrawal date, the CMA 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.
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) a fixed amount,
   (b) an amount calculated by reference to a daily rate, or
   (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.

(3) A penalty imposed under subsection (1) must not—
   (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
   (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify;
   (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.

(4) The fixed amount specified for the purposes of subsection (3)(a) or (c) may not exceed £30,000.

(5) The amount per day specified for the purposes of subsection (3)(b) or (c) may not exceed £15,000.

(6) In imposing a penalty by reference to a daily rate—
   (a) no account is to be taken of any days before the service of the notice under section 112 of the Enterprise Act 2002 (as applied by subsection (9)) on the person concerned, and
   (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (7).

(7) The days are—
   (a) the day on which the requirement concerned is satisfied;
(b) the day on which the CMA makes a decision (within the meaning given by section 31(2)) or terminates the investigation in question without making such a decision;

(c) if the Secretary of State has made an order under section 31F(1)(b) imposing a time-limit on the making of such a decision, the latest day on which such a decision may be made as a result of the investigation in question.

(8) Before making an order under subsection (3), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.

(9) Sections 112 to 115 of the Enterprise Act 2002 (supplementary provisions about penalties) apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty imposed under section 110(1) of that Act.

40B Statement of policy on penalties

(1) The CMA must prepare and publish a statement of policy in relation to the use of its powers under section 40A.

(2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 40A.

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

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

(5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(6) In deciding whether and, if so, how to proceed under section 40A, the CMA must have regard to the statement of policy which was most recently published under this section at the time when the failure concerned occurred.

41 Agreements notified to the Commission.

[F168] (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.

(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.
42 Offences.

(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 (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 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.

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, 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;
44 False or misleading information.

(1) If information is provided by a person to the CMA in connection with any function of the 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 CMA in connection with any of 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.
46 Appealable decisions.

(1) Any party to an agreement in respect of which the [F179CMA] has made a decision may appeal to [F180the Tribunal] against, or with respect to, the decision.

(2) Any person in respect of whose conduct the [F179CMA] has made a decision may appeal to [F180the Tribunal] against, or with respect to, the decision.

[F181(3) In this section “decision” means a decision of the [F179CMA] —

(a) as to whether the Chapter I prohibition has been infringed,
(b) as to whether the prohibition in [F182Article 101(1)] has been infringed,
(c) as to whether the Chapter II prohibition has been infringed,
(d) as to whether the prohibition in [F183Article 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**

- **F179** 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](https://www.legislation.gov.uk/ukpga/2013/24/section/103/afford) (with s. 28; S.I. 2014/416, art. 2(1)(d) (with Sch.))
- **F180** 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.)](https://www.legislation.gov.uk/ukpga/2002/40/section/279/afford)
- **F181** 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)](https://www.legislation.gov.uk/ukpga/2004/1261/section/1/afford) (with reg. 8)
- **F182** 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))](https://www.legislation.gov.uk/ukpga/2012/1809/section/2/afford)
- **F183** 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))](https://www.legislation.gov.uk/ukpga/2012/1809/section/2/afford)

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

- **C43** 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

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**Third party appeals**

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

   a decision falling within paragraphs (a) to (f) of section 46(3);
   a decision falling within paragraph (g) of section 46(3);
   a decision of the [CMA](https://www.gov.uk/government/organisations/competition-and-markets-authority) 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;
   a decision of the [CMA](https://www.gov.uk/government/organisations/competition-and-markets-authority) to make directions under section 35;
   a decision of the [CMA](https://www.gov.uk/government/organisations/competition-and-markets-authority) not to make directions under section 35; or
   such other decision of the [CMA](https://www.gov.uk/government/organisations/competition-and-markets-authority) 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.

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**Textual Amendments**

- **F184** 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)](https://www.legislation.gov.uk/ukpga/2002/40/section/47/afford)
- **F185** 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)](https://www.legislation.gov.uk/ukpga/2004/1261/section/1/afford) (with reg. 8)
- **F186** 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](https://www.legislation.gov.uk/ukpga/2013/24/section/103/afford) (with s. 28; S.I. 2014/416, art. 2(1)(d) (with Sch.))
47A Monetary claims before Tribunal

(1) This section applies to—
   (a) any claim for damages, or
   (b) any other claim for a sum of money,
which a person who has suffered loss or damage as a result of the infringement of a
relevant prohibition may make in civil proceedings brought in any part of the United
Kingdom.

(2) In this section “relevant prohibition” means any of the following—
   (a) the Chapter I prohibition;
   (b) the Chapter II prohibition;
   (c) the prohibition in Article 101(1) of the Treaty;
   (d) the prohibition in Article 102 of the Treaty.

(3) For the purpose of identifying claims which may be made in civil proceedings, any
limitation rules that would apply in such proceedings are to be disregarded.

(4) A claim to which this section applies may (subject to the provisions of this Act and
Tribunal rules) be made in proceedings brought before the Tribunal.

(5) But no claim may be made in such proceedings—
   (a) until a decision mentioned in subsection (6) has established that the relevant
prohibition in question has been infringed; and
   (b) otherwise than with the permission of the Tribunal, during any period
specified in subsection (7) or (8) which relates to that decision.

(6) The decisions which may be relied on for the purposes of proceedings under this
section are—
   (a) a decision of the \([\text{CMA}]\) that the Chapter I prohibition or the Chapter II
prohibition has been infringed;
   (b) a decision of the \([\text{CMA}]\) that the prohibition in Article 101(1) or Article
102 of the Treaty has been infringed;
   (c) a decision of the Tribunal (on an appeal from a decision of the \([\text{CMA}]\))
that the Chapter I prohibition, the Chapter II prohibition or the prohibition in
Article 101(1) or Article 102 of the Treaty has been infringed; or
   (d) a decision of the European Commission that the prohibition in Article 101(1)
or Article 102 of the Treaty has been infringed.

(7) The periods during which proceedings in respect of a claim made in reliance on
a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without
permission are—
   (a) in the case of a decision of the \([\text{CMA}]\), the period during which an appeal
may be made to the Tribunal under \([46\text{A}]\) section 46 or section 47;
   (b) in the case of a decision of the \([\text{CMA}]\) which is the subject of an appeal
mentioned in paragraph (a), the period following the decision of the Tribunal.
on the appeal during which a further appeal may be made under section 49

(c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49;

(d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the Supreme Court from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.

(8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—

(a) the period during which proceedings against the decision or finding may be instituted in the European Court; and

(b) if any such proceedings are instituted, the period before those proceedings are determined.

(9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.

(10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.

Textual Amendments

F187 S. 47A inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 18(1), 279 (with s. 18(2)); S.I. 2003/1397, art. 2(1), Sch.

F188 S. 47A(2)(c)(d) substituted for s. 47A(2)(c)-(f) (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))

F189 Word in s. 47A(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 28 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F190 S. 47A(6)(b)-(d) substituted for s. 47A(b)-(e) (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))

F191 Words in s. 47A(7)(a) substituted (20.7.2007) by The EC Competition Law (Articles 84 and 85 Enforcement (Revocation)) Regulations 2007 (S.I. 2007/1846), regs. 1, 3(2)

F192 Words in s. 47A(7)(b) repealed (20.7.2007) by The EC Competition Law (Articles 84 and 85 Enforcement (Revocation)) Regulations 2007 (S.I. 2007/1846), reg. 1, Sch.

F193 Words in s. 47A(7)(c) repealed (20.7.2007) by The EC Competition Law (Articles 84 and 85 Enforcement (Revocation)) Regulations 2007 (S.I. 2007/1846), reg. 1, Sch.

F194 Words in s. 47A(7)(d) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 9 para. 65(3); S.I. 2009/1604, art. 2(d)

Claims brought on behalf of consumers

(1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.
(2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.

(3) A consumer claim may be included in proceedings under this section if it is—
   
   (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
   
   (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;

   and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.

(4) The consumer claims included in proceedings under this section must all relate to the same infringement.

(5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.

(6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).

(7) This subsection applies to goods or services which—
   
   (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
   
   (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.

(8) A business includes—
   
   (a) a professional practice;
   
   (b) any other undertaking carried on for gain or reward;
   
   (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.

(9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.

(10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.]
Further appeals

(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;

(b) from a decision of the Tribunal as to the award of damages or other sum in respect of a claim made in proceedings under section 47A or included in proceedings under section 47B (other than a decision on costs or expenses) or as to the amount of any such damages or other sum; and

(c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.

(2) An appeal under this section—

(a) 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.

(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.

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
       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—
   (a) applications for approval of redress schemes,
   (b) the approval of redress schemes, and
   (c) 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) 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
   (b) 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”—

(a) may be monetary or non-monetary, and

(b) may be offered to persons who have not suffered a loss as a result of the infringement decision to which the redress scheme relates.

49D Redress schemes: recovery of costs

(1) 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.

(2) A requirement to pay costs is imposed by giving that person written notice specifying —

(a) the amount to be paid,

(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.

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.[

Textual Amendments
F198 Ss. 49C-49E inserted (3.8.2015 for specified purposes) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 8 para. 12; S.I. 2015/1584, art. 3(a)

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 [F199CMA] 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.

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Textual Amendments

F199 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.)

F200 CMA's rules, guidance and fees

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51 Rules.

(1) The [F201CMA] may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as [F202it] considers appropriate.

(2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the [F203CMA] powers under this section.

(3) If the [F204CMA] is preparing rules under this section [F205it] 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 [F206CMA] 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 [F206CMA] —

(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 [F206CMA] of the proposed modifications and take into account any comments made by the [F206CMA].

(8) Subsections (5) to (7) apply also to any alteration of the rules made by the [F206CMA].

(9) The Secretary of State may, after consulting the [F206CMA], 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 [F206 CMA] to exercise [F207 its] powers under this section and make rules about that matter.

Textual Amendments
F201 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.)
F202 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.)
F203 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.)
F204 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.)
F205 Words in s. 51(3) 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.)
F206 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.)
F207 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) [F208 The CMA] must prepare and publish general advice and information about—
(a) the application of the Chapter I prohibition and the Chapter II prohibition, and
(b) the enforcement of those prohibitions.

[F209(1A)] The CMA must prepare and publish general advice and information about—
(a) the application of the prohibitions in Article 101(1) and Article 102; and
(b) the enforcement by it of those prohibitions.

(2) The [F210 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 [F211 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 [F212 CMA] may take into account in considering whether, and if so how, to exercise a power conferred on [F213 it] by Chapter I, II or III.

(5) Any advice or information published by the [F214 CMA] under this section is to be published in such form and in such manner as [F215 it] considers appropriate.

(6) If the [F216 CMA] is preparing any advice or information under this section [F217 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 [F216 CMA];
(b) the other regulators; and
(c) such other persons as he considers appropriate.

Textual Amendments
F208 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.)
F209 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)
F210 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.)
F211 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))
F212 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.)
F213 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.)
F214 Words in s. 52(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(39) (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.)
F215 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.)
F216 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.

[F217 (1)] The [F218 OFT] may charge fees, of specified amounts, in connection with the exercise by [F218 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 [F218 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 [F218 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 [F218 OFT] under section 51; and
(b) “specified” means specified in rules.]
Regulators

(1) In this Part “regulator” means [F219—
(F220(a) the Office of Communications;]
(b) the Gas and Electricity Markets Authority;
(c) the Water Services Regulation Authority;
(d) the Office of Rail Regulation;
(e) the Northern Ireland Authority for Utility Regulation;
(f) the Civil Aviation Authority;
(g) Monitor.]
(h) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.]
(i) the Financial Conduct Authority.]

(2) Parts II and III of Schedule 10 provide for functions of the [F229CMA] 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 [F230any 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 [F231CMA] 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.

F232 (6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State [F233, the CMA] or by such other person as may [F234—
   (a) prescribe circumstances in which the CMA may decide that, in a particular case, it is to exercise Part I functions in respect of the case rather than a regulator;
   (b) be prescribed.

F235 (6A) Where the regulations make provision as mentioned in subsection (6)(a), they must—
   (a) include provision requiring the CMA to consult the regulator concerned before making a decision that the CMA is to exercise Part I 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 I functions in respect of the case rather than the regulator if the regulator consents.]

F236 (6B) The Secretary of State may by regulations make provision requiring arrangements to be made for the sharing of information between competent persons in connection with concurrent cases.]

F236 (6C) For the purposes of subsection (6B), “a concurrent case” is a case in respect of which—
   (a) the CMA considers that Part I 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 I functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by it.]

(7) “Competent person” means the [F237CMA] or any of the regulators.

F238 (8) In this section, “subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 (c 30) and includes an instrument made under—
   (a) an Act of the Scottish Parliament;
   (b) Northern Ireland legislation.]]
Competition Act 1998 (c. 41)
Part I – Competition
Chapter V – Miscellaneous

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Competition Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information
17 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

55 General restrictions on disclosure of information.

Textual Amendments
F239 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)

Modifications etc. (not altering text)
C47 S. 55 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), s. 115; S.I. 2003/2681, art. 2(b)

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

Textual Amendments
F239 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 [F240 CMA] in the exercise of any of [F240 its] functions under this Part.

Textual Amendments
F240 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.)
F241 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.)

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Findings of fact by CMA

58 Findings of fact by CMA.

(1) Unless the court directs otherwise, CMA'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 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 the Tribunal on such an appeal has confirmed the finding.

(2) In this section—

- a CMA's finding means a finding of fact made by CMA in the course of conducting an investigation;
- Part I proceedings means proceedings brought otherwise than by CMA in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; or
- relevant party means—

(a) in respect of the Chapter I prohibition or the prohibition in Article 101(1) or Article 102, a party to the agreement which is alleged to have infringed the prohibition; and

(b) in respect of the Chapter II prohibition or the prohibition in Article 102, the undertaking whose conduct is alleged to have infringed the prohibition.

(3) Rules of court may make provision in respect of assistance to be given by CMA to the court in Part I proceedings.

Textual Amendments

F242 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.)

F243 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.)

F244 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))

F245 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.)

F246 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.)

F247 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.)

F248 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.)
58A Findings of infringements

(1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of—
   (a) the Chapter I prohibition;
   (b) the Chapter II prohibition;
   (c) the prohibition in Article 101(1) of the Treaty;
   (d) the prohibition in Article 102 of the Treaty.

(2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.

(3) The decisions are—
   (a) a decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed;
   (b) a decision of the CMA that the prohibition in Article 101(1) or Article 102 of the Treaty has been infringed;
   (c) a decision of the Tribunal (on an appeal from a decision of the CMA) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 101(1) or Article 102 of the Treaty has been infringed.

(4) The periods mentioned in subsection (2) are—
   (a) in the case of a decision of the CMA, the period during which an appeal may be made to the Tribunal under section 46 or 47...
(b) in the case of a decision of the Tribunal mentioned in subsection (3)(c), the period during which a further appeal may be made under section 49;

(c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the Supreme Court from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined.

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**Textual Amendments**

F258 Words in s. 58A(1)(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))

F259 Words in s. 58A(1)(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))

F260 Word in s. 58A(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 37 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F261 Words in s. 58A(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))

F262 Words in s. 58A(3)(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))

F263 Words in s. 58A(4)(a) repealed (20.7.2007) by The EC Competition Law (Articles 84 and 85) Enforcement (Revocation) Regulations 2007 (S.I. 2007/1846), reg. 1, Sch.

F264 Words in s. 58A(4)(b) repealed (20.7.2007) by The EC Competition Law (Articles 84 and 85) Enforcement (Revocation) Regulations 2007 (S.I. 2007/1846), reg. 1, Sch.

F265 Words in s. 58A(4)(c) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), Sch. 9 para. 65(4); S.I. 2009/1604, art. 2(d)

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**Interpretation and governing principles**

59 Interpretation of Part 1.

(1) In this Part—

[F267] “agreement” is to be read with section 2(5) and (6);]

[F268] ...  

[F269] “Article 101(1)” means Article 101(1) of the Treaty;  
[F269] “Article 101(3)” means Article 101(3) of the Treaty;  
[F269] “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);  
[F270] “the CMA” means the Competition and Markets Authority;  
“the Commission” ... means the European Commission;  
“the Council” means the Council of the European Union;  
“the court”, except in sections 58 ... 60 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;

“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 [F269 General Court];

[F274 “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;]

[F275 “individual exemption” has the meaning given in section 4(2);]

“information” includes estimates and forecasts;

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

[F276 “investigation” means an investigation under section 25;]

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

[F277 “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;

[F278 “parallel exemption” has the meaning given in section 10(3);

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

[F279 “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;

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

[F269 “the Treaty” means the Treaty on the Functioning of the European Union;]

[F280 “the Tribunal” means the Competition Appeal Tribunal;

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

[F281 “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.]

(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 [\(\text{\textsuperscript{282}}\text{CMA}\)] by this Part to require information includes power to require any document which [\(\text{\textsuperscript{285}}\text{it}\)] believes may contain that information.

### Textual Amendments

**F266** 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)

**F267** 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)

**F268** 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.)

**F269** 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))

**F270** 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.)

**F271** 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.)

**F272** 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.

**F273** 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.)

**F274** 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)

**F275** 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))

**F276** 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)

**F277** 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)

**F278** 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.)

**F279** 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)

**F280** 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.)

**F281** 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)

**F282** 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.)

**F283** 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

**18** 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.
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 [EU law in relation to competition within 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 [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—

(a) the [CMA]; and
(b) any person acting on behalf of the [CMA], 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 [EU law];
(b) the civil liability of an undertaking for harm caused by its infringement of [EU law].
PART II

[F286 INSPECTIONS UNDER ARTICLES 20, 21 AND 22(2)]

Textual Amendments
F286 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

61 Introduction.

(1) In this Part—

“Article 85” and “Article 86” have the same meaning as in Part I;
“authorised officer”, in relation to the [F287 OFT], means an officer to whom an authorisation has been given under subsection (2);
[F288 “the CMA” means the Competition and Markets Authority;] “the Commission” means the European Commission;
[F289 “Commission investigation” means an investigation ordered by a decision of the Commission under a prescribed provision of [F284 EU] law relating to Article 85 or 86;
[F290 “OFT’s investigation” means an investigation conducted by the OFT at the request of the Commission under a prescribed provision of Community law relating to Article 85 or 86;
[F291 “OFT’s special investigation” means an OFT’s investigation conducted at the request of the Commission in connection with a Commission investigation;
“prescribed” means prescribed by order made by the Secretary of State;
“premises” means—
(a) in relation to a Commission investigation, any premises, land or means of transport which an official of the Commission has power to enter in the course of the investigation; and
(b) in relation to [F293 an OFT’s] investigation, any premises, land or means of transport which an official of the Commission would have power to enter if the investigation were being conducted by the Commission.
[F294 “the Tribunal” means the Competition Appeal Tribunal;”]
[F294 “Tribunal rules” means rules under section 15 of the Enterprise Act 2002.”]

(2) For the purposes of [F295 an OFT’s] investigation, an officer of the [F286 OFT] to whom an authorisation has been given has the powers of an official authorised by the Commission in connection with a Commission investigation under the relevant provision.

(3) “Authorisation” means an authorisation given in writing by the [F297 OFT] which—
(a) identifies the officer;
(b) specifies the subject matter and purpose of the investigation; and
Power to enter business premises under a warrant: Article 20 inspections

(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—

(a) the Commission has ordered an Article 20 inspection;

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

(c) draws attention to any penalties which a person may incur in connection with the investigation under the relevant provision of [F284EU law.

Textual Amendments

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<th>No.</th>
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<td>F284</td>
<td>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))</td>
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<td>F287</td>
<td>Word in s. 61(1) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(46)(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.)</td>
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<td>F288</td>
<td>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.)</td>
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<td>F289</td>
<td>Words in s. 61(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(46)(a)(ii), 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.)</td>
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<td>F294</td>
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<td>F297</td>
<td>Word in s. 61(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(46)(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.)</td>
</tr>
</tbody>
</table>

62 [F284EU]
(3) A [article 20 inspection] is also being obstructed if there are reasonable grounds for suspecting that there are [books or records on any business premises]—  
   (a) the production of which has been required by a Commission official exercising his power in accordance with Article 20(3) of the EC Competition Regulation; and  
   (b) which have not been produced as required.

(4) An Article 20 inspection is likely to be obstructed if—  
   (a) 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 books or records on any business premises which 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.

(5) A warrant under this section shall authorise a named officer of the CMA and any other 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.

(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.

(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.

(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

“[CMA] officer” means any officer of the [CMA] whom the [CMA] has authorised in writing to accompany the named officer.

(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.

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**Textual Amendments**

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<td>F298</td>
<td>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)</td>
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<td>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.)</td>
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<td>F302</td>
<td>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)</td>
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<td>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)</td>
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<td>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)</td>
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</tr>
</tbody>
</table>
62A Power to enter non-business premises under a warrant: Article 21 inspections

(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—

(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 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 CMA and any other 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 CMA and any other 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 CMA and any other CMA officer, or Commission official, accompanying the named officer to take or obtain copies of books or records 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.

(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.

(10A) An application for a warrant under this section must be made—

(a) in the case of an application to the High Court, in accordance with rules of court;

(b) in the case of an application to the Tribunal, in accordance with Tribunal rules.

(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

“[\[F327]\text{CMA}\] officer” means any officer of the [\[F327]\text{CMA}\] whom the [\[F327]\text{CMA}\] has authorised in writing to accompany the named officer.\]

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Textual Amendments

F322 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

F323 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.)

F324 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))

F325 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.)

F326 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.)

F327 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.)

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[\[F328]\text{62B}\] Powers when conducting an Article 22(2) inspection

(1) For the purposes of an Article 22(2) inspection, an authorised officer of the [\[F329]\text{CMA}\] 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 [F329CMA]” means any officer of the [F329CMA] to whom an authorisation has been given; and

“authorisation” means an authorisation given in writing by the [F329CMA] 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.]

Textual Amendments
F328 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
F329 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 [F338] Power to enter business premises under a warrant: Article 22(2) inspections.

(1) [F331] On an application made to it by the CMA, the High Court or the Tribunal must issue a warrant if it is satisfied that—

[F332](a) the Commission has requested the [F333CMA] 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) [F334] An Article 22(2) inspection is being obstructed if—

(a) an authorised officer of the [F335CMA] has attempted to enter [F336] 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 [F337] on any business premises books or records [F338] on the premises which the officer has power to examine.

(3) [F339] An Article 22(2) inspection is also being obstructed if—

(a) there are reasonable grounds for suspecting that there are [F340] on any business premises books or records [F341] on the premises which an authorised officer of the [F335CMA] 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) [F342] An Article 22(2) inspection is likely to be obstructed if—

(a) there are reasonable grounds for suspecting that there are [F343] on any business premises books or records [F344] on the premises which an authorised officer of the [F335CMA] 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.

[F345(5) A warrant under this section shall authorise a named authorised officer of the [F335CMA] and any other authorised officer of the [F335CMA], 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 [F335CMA] 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; and
(d) to seal the premises, any part of the premises or any books or records which an authorised officer of the [F335CMA] has power to seal, for the period and to the extent necessary for the inspection.]

[F346(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 [F347 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.

[F348(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.

[F349(10) In this section—
“business premises” means any premises of an undertaking or association of undertakings which an authorised officer of the [F338CMA] 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.]
Entry of premises under sections 62[F351], 62A and 63: supplementary.

(1) A warrant issued under section 62[F352], 62A or 63 must indicate—
   (a) the subject matter and purpose of the [F353] inspection;
   (b) the nature of the offence created by section 65.

(2) The powers conferred by section 62[F354], 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—
(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—

[F355]“named officer” means—

(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.

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[F356], 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.

[F355]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—
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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) 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.

Textual Amendments
F357 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

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.

Textual Amendments
F357 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

PART 2A

ARTICLE 22(1) INVESTIGATIONS

Textual Amendments
F358 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
[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—

“the CMA”;

“Article 101(1)”;  
“Article 102”;

“the court”;

“document”;

“information”;

“officer”;

“person”;

“premises”;

“the Treaty”; and

“the Tribunal”;  
“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 CMA by this Part to require information includes power to require any document which it believes may contain that information.

### Textual Amendments

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>F359</td>
<td>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.)</td>
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<td>F360</td>
<td>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.)</td>
</tr>
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<td>F361</td>
<td>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))</td>
</tr>
<tr>
<td>F362</td>
<td>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.)</td>
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<tr>
<td>F363</td>
<td>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.)</td>
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<tr>
<td>F364</td>
<td>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.)</td>
</tr>
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</table>

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

(1) In any of the following cases, the 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—
   (a) may affect trade between Member States; and
   (b) has as its object or effect the prevention, restriction or distortion of competition within the European Union.

(3) The second case is where there are reasonable grounds for suspecting that the prohibition in Article 102 has been infringed.

(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 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

F365 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.)
F366 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 [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 [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.

Textual Amendments
F367  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.)
F368  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 [\(^{F369}\)CMA] who is authorised in writing by the [\(^{F369}\)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 [\(^{F369}\)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 practical 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
   (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
F369 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.)
F370 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) [F371]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 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 CMA and any other of its officers whom the 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;
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(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 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), [F374the 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.

F375(8A) An application for a warrant under this section must be made—

(a) in the case of an application to the court, in accordance with rules of court;

(b) in the case of an application to the Tribunal, in accordance with Tribunal rules.

(9) In this section “business premises” has the same meaning as in section 65F.
Textual Amendments

F371 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.)

F372 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.)

F373 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.)

F374 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.)

F375 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) 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 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 CMA, and any other of its officers whom the 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), \[^{F379}\text{the court or (as the case may be) the Tribunal}]\] 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.

\[^{F380}\text{An application for a warrant under this section must be made—}\]

(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.

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**Textual Amendments**

F376 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.)

F377 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.)

F378 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.)

F379 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.)

F380 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—
   (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—
   (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 CMA in connection with any function of the 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 [F381 CMA] in connection with any of 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.]
(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.

(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 M5 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).

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Marginal Citations

M5 1973 c. 41.

PART IV

SUPPLEMENTAL AND TRANSITIONAL

70 Contracts as to patented products etc.

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

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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),
   (d) section 50, or
   (e) paragraph 6(3) of Schedule 4,
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.

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72 Offences by bodies corporate etc.

(1) This section applies to an offence under any of sections 42 to 44, \[^{F384}\] 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.
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;
   (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 Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(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 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 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.

(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) In subsection (6) “infringement” means an infringement of 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 or 65F, or
   (b) that may be conferred by a warrant under 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

F284 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))

F385 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)

F386 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)

F387 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)

F388 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)

F389 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))

F390 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)

F391 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)

Marginal Citations

M7 1947 c. 44.
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.

75A Rules in relation to Part 2 and Part 2A

(1) The [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 [CMA] is preparing rules under this section it must consult such persons as it considers appropriate.

(3) No rule made by the [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 [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 [CMA] of the proposed modifications and take into account any comments made by the [CMA].

(6) Subsections (3) to (5) apply also to any alteration of the rules made by the [CMA].

(7) The Secretary of State may, after consulting the [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 [CMA] to exercise its powers under this section and make rules about that matter.

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**Textual Amendments**

F392 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

F393 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**

<table>
<thead>
<tr>
<th></th>
<th>Power Exercised</th>
<th>Date Appointed</th>
<th>Instrument</th>
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<tbody>
<tr>
<td>P1</td>
<td>S. 76 power partly exercised (9.11.1998)</td>
<td>26.11.1998</td>
<td>S.I. 1998/2750, art. 2</td>
</tr>
<tr>
<td>P3</td>
<td>S. 76 power partly exercised (2.3.1999)</td>
<td>1.4.1999</td>
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<td>S. 76 power partly exercised (19.10.1999)</td>
<td>10.11.1999</td>
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*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to Competition Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes.
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 Part 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) Section 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

F394 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)

F395 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.
Competition Act 1998 (c. 41)

SCHEDULE 1 – Exclusions: Mergers and Concentrations

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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 Part 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) Section 26 of the 2002 Act applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

Textual Amendments

F396 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)

F397 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

F398 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 [CMA] gives a direction under this paragraph to that effect.

(2) If the [CMA] is considering whether to give a direction under this paragraph, [it] may by notice in writing require any party to the agreement in question to give [it] such information in connection with the agreement as [it] may require.

(3) The [CMA] 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 [CMA] may give a direction under this paragraph.

(5) The [CMA] may also give a direction under this paragraph if—

(a) it considers that the agreement will, if not excluded, infringe the Chapter I prohibition; and]
(b) the agreement is not a protected agreement.

(6) 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).

Protected agreements

An agreement is a protected agreement for the purposes of paragraph 4 if—

(a) the CMA or (as the case may be) the Secretary of State has published its or his decision not to make a reference... under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;

(b) the CMA or (as the case may be) the Secretary of State has made a reference... under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and 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 CMA has made a reference... under section 32 of the Water Industry Act 1991 in connection with the agreement and 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.
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


Textual Amendments

F407 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)
SCHEDULE 2

EXCLUSIONS: OTHER COMPETITION SCRUTINY

PART I

FINANCIAL SERVICES

The Competition Act 1998: Chapter I prohibition.

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—
   (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));
(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 Competition Act 1980).

(4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

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

“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.

(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.”

Marginal Citations
M9 1976 c. 34.
M10 1980 c. 21.

PART II
COMPANIES

Textual Amendments

F409 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 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,
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.”

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

PART III

Broadcasting

The Broadcasting Act 1990 (c.42)

(1) The Broadcasting Act 1990 is amended as follows.

(2) In section 194A (which modifies the 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—
Competition Act 1998 (c. 41)

SCHEDULE 2 – Exclusions: Other Competition Scrutiny

Document Generated: 2019-08-27

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial

team to Competition Act 1998. Any changes that have already been made by the team appear in the

current content and are referenced with annotations. (See end of Document for details) View outstanding changes

(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

(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.

(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  [F411](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) [F412]OFCOM 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) [F413]OFCOM must—
   (a) consult the [F414]CMA 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.

[F415](4) In this paragraph “networking arrangements” has the same meaning as in Part 3 of the Communications Act 2003.]

Textual Amendments
F411 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)
F412 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)
F413 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)
PART IV
ENVIRONMENTAL PROTECTION

Textual Amendments

F416 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 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.

94A “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 Restrictive Trade Practices Acts 1976 and 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 Town and Country Planning (Scotland) Act 1997; or

(c) which is made under 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 Town and Country Planning Act 1990; or

(b) a planning obligation for the purposes of section 299A of that Act.

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**Textual Amendments**

F417 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. |
| M18 | 1990 c. 8. |

**Section 21(2) agreements**

2 F418(1) The Chapter I prohibition does not apply to an agreement in respect of which a direction under section 21(2) of the 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 OFT gives a direction under this paragraph to that effect.

(4) If the OFT is considering whether to give a direction under this paragraph, it may by notice in writing require any party to the agreement in question to give the OFT such information in connection with the agreement as it may require.

(5) The OFT 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 OFT may give a direction under this paragraph.

(7) The OFT may also give a direction under this paragraph if it considers—
   (a) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
   (b) that the 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).
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.

(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 Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 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

F422 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
Services of general economic interest etc.

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 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

(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 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

(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.
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 [\textsection 423 Article 39 of the Treaty on the Functioning of the European Union] of the Treaty; or
(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 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 CMA gives a direction under this paragraph to that effect.

(4) If the CMA is considering whether to give a direction under this paragraph, it may by notice in writing require any party to the agreement in question to give the CMA such information in connection with the agreement as it may require.

(5) The 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 CMA may give a direction under this paragraph.

(7) The CMA may also give a direction under this paragraph if it considers that an agreement (whether or not 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 Annex I to the Treaty; and

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Textual Amendments

**F423** 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))

**F424** 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))

**F425** 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.)
F426 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.)

F427 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.)

F428 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)

SCHEDULE 4

Section 3(1)(d).

Textual Amendments

F429 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.)

SCHEDULE 5

Section 12(2).

NOTIFICATION UNDER CHAPTER I: PROCEDURE

Textual Amendments

F430 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)

C54 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 [430]OFIT under section 51; and
“specified” means specified in the rules.
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—that the application has been made; and 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 OFT considers that it is likely—that the agreement concerned will infringe the Chapter I prohibition, and that it would not be appropriate to grant the agreement an individual exemption, OFT may make a decision ("a provisional decision") under this paragraph.

(2) If the OFT makes a provisional decision—

(a) the OFT must notify the applicant in writing of 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 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 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.

Procedure on application for guidance

4. When determining an application for guidance, the OFT must follow such procedure as may be specified.
Procedure on application for a decision

5  (1) When determining an application for a decision, the [F431OFT] must follow such procedure as may be specified.

(2) The [F431OFT] must arrange for the application to be published in such a way as [F433it] thinks] most suitable for [F434bringing the application] to the attention of those likely to be affected by it, unless [F435the OFT is] satisfied that it will be sufficient [F436... to seek information from one or more particular persons other than the applicant.

(3) In determining the application, the [F431OFT] must take into account any representations made to [F437it] by persons other than the applicant.

Publication of decisions

6  If the [F431OFT] determines an application for a decision [F438it] must publish [F438its] decision, together with [F438its] reasons for making it, in such manner as may be specified.
Delay by the [F431 OFT]

7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the [F431 OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the [F431 OFT] in determining the application.

(2) The court may give such directions to the [F431 OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.

[F439 SCHEDULE 6 Section 20(2).]

NOTIFICATION UNDER CHAPTER II: PROCEDURE

Textual Amendments

[F439] 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 [F440 OFT] under section 51; and

“specified” means specified in the rules.

Textual Amendments

[F440] Words in Sch. 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.)
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)

C55 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 [F440]OFT[F441] considers that it is likely that the conduct concerned will infringe the Chapter II prohibition, [F441]it[F440] may make a decision ("a provisional decision") under this paragraph.

(2) If the [F440]OFT[F441] makes a provisional decision, [F441]it[F440] must notify the applicant in writing of that decision.

(3) When making a provisional decision, the [F440]OFT[F441] must follow such procedure as may be specified.

(4) A provisional decision does not affect the final determination of an application.

(5) If the [F440]OFT[F441] 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

F440 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.)

F441 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 [F440]OFT[F441] must follow such procedure as may be specified.

Textual Amendments

F440 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.)
Procedure on application for a decision

5  (1) When determining an application for a decision, the [F440 OFT] must follow such procedure as may be specified.

(2) The [F440 OFT] must arrange for the application to be published in such a way as [F442 it thinks] most suitable for [F443 bringing the application] to the attention of those likely to be affected by it, unless [F444 the OFT is] satisfied that it will be sufficient [F445 ... to seek information from one or more particular persons other than the applicant.

(3) In determining the application, the [F440 OFT] must take into account any representations made to [F446 it] by persons other than the applicant.

Publication of decisions

6  If the [F440 OFT] determines an application for a decision [F447 it] must publish [F447 its] decision, together with [F447 its] reasons for making it, in such manner as may be specified.
Delay by the \[F440\] OFT

7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the \[F440\] OFT to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the \[F440\] OFT in determining the application.

(2) The court may give such directions to the \[F440\] OFT as it considers appropriate for securing that the application is determined without unnecessary further delay.

\[F448\] 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 \[F449\] CMA 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.

\[F449\] 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 \[F449\] CMA 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 \[F451\] CMA 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 \[F452\] CMA's competition concerns;
(c) any other facts which the [F451CMA] 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.

3. (1) The [F452CMA] 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.

4. If, after giving notice under paragraph 2 or 3 the [F453CMA] decides—

(a) not to accept the commitments or variation concerned, and

(b) not to proceed by virtue of paragraph 5 or 6,

the [F454CMA] must give notice that it has so decided.

5. The requirements of paragraph 3 shall not apply if the [F455CMA]—
(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.

6. The requirements of paragraph 3 shall not apply if the 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.

7. As soon as practicable after accepting commitments or a variation under section 31A the CMA must publish the commitments or the variation in such manner as the CMA considers appropriate.

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 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 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.

PART 2

PROCEDURAL REQUIREMENTS FOR THE RELEASE OF COMMITMENTS

10. Paragraph 11 applies where the CMA proposes to release any commitments under section 31A.
(1) Before releasing the commitments, the [F460 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.

12. If after giving notice under paragraph 11 the [F461 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.

13. As soon as practicable after releasing the commitments, the [F462 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.

14. A notice under paragraph 11 or 12 shall be given by—
(a) sending a copy of the notice to such other person or persons as the 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 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.

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**Textual Amendments**

[F463] 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.)

[F464] 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.)

[F465] 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.)

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**SCHEDULE 8**

Sections 46(5) and 48(4).

**APPEALS**

**PART I**

**GENERAL**

**Interpretation**
Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Competition Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F466 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.)

2 (1) An appeal to the Tribunal under section 46 or 47 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 CMA's exercise of its discretion in making the disputed decision.

(3) The Tribunal may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.

(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

F467 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.)

F468 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.)

F469 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.)

F470 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.)

F471 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)

C56 Sch. 8 para. 2(2) applied (1.3.2000) by S.I. 2000/261, Rule 6

Decisions of the tribunal

3(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 [Tribunal] must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.

(2) The [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 [CMA],
(b) impose or revoke, or vary the amount of, a penalty,
(c) grant or cancel an individual exemption or vary any conditions or obligations imposed in relation to the exemption by the [CMA],
(d) give such directions, or take such other steps, as the [CMA] could have or taken, or
(e) make any other decision which the [CMA] could have made.

(3) Any decision of the [Tribunal] on an appeal has the same effect, and may be enforced in the same manner, as a decision of the [CMA].

(4) If the [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

F472 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)

F473 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.)

F474 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.)

F475 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)

F476 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.)

[F477A] 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—
(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 [\textsuperscript{F478}CMA] with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.

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**Textual Amendments**

**F477** 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)

**F478** 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.)

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**PART II**

**RULES**

**Registrar of Appeal Tribunals**

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**Notice of appeal**

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**Response to the appeal**
Competition Act 1998 (c. 41)

SCHEDULE 8 – Appeals

F479 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

F479

Conduct of the hearing

F479

Interest

F479

Fees

F479

Withdrawing an appeal

F479
Textual Amendments

**F479** 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**

**F479**

Textual Amendments

**F479** 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**

**F479**

Textual Amendments

**F479** 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.)

**SCHEDULE 9**

Section 51(2).

**[F480]** CMA'S RULES

Textual Amendments

**F480** 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**

**F481** In this Schedule “rules” means rules made by the **[F482]** CMA under section 51.]

Textual Amendments

**F481** 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)**

**F482** 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.)
Textual Amendments

**F483** 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);

(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 **[F484]** 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 [F485]OF'T 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 [F485]OF'T and a regulator.

Textual Amendments

**F484** 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))

**F485** 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

[F486] Rules may make provision as to the procedure to be followed by the [F485] OFT when making a provisional decision under paragraph 3 of Schedule 5 or paragraph 3 of Schedule 6.

Guidance

4

[F487] Rules may make provision as to—

(a) the form and manner in which guidance is to be given;

(b) the procedure to be followed if—

(i) the [F485] OFT 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 [F485] OFT takes further action with respect to conduct after giving guidance that it is not likely to infringe the Chapter II prohibition.

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 [F488] CMA is to publish a decision;

(d) the procedure to be followed if—

(i) the [F488] CMA takes further action with respect to an agreement after having decided that it does not infringe the Chapter I prohibition;

(ii) the [F488] CMA takes further action with respect to an agreement after having decided that it does not infringe the prohibition in [F490] Article 101(1); or

(iii) the [F488] CMA takes further action with respect to conduct after having decided that it does not infringe the Chapter II prohibition; or
the \text{CMA}\) takes further action with respect to conduct after having decided that it does not infringe the prohibition in Article 102).

(2) In this paragraph “decision” means a decision of the CMA —

(a) to whether or not an agreement has infringed the Chapter I prohibition;

(b) to whether or not an agreement has infringed the prohibition in Article 101(1);

(c) to whether or not conduct has infringed the Chapter II prohibition; or

(d) to whether or not conduct has infringed the prohibition in Article 102.

\textbf{Individual exemptions}

Rules may make provision as to—

(a) the procedure to be followed by the \text{OFT} when deciding whether, in accordance with section 5—

(i) to cancel an individual exemption that \text{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.]
(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 \[\text{F485} \text{OFT}\] will consider such an application;
(c) the procedure to be followed by the \[\text{F485} \text{OFT}\] 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**

\[\text{F485}\] 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.)

\[\text{F496}\] 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))

**Block exemptions**

\[\text{F497}\] Rules may make provision as to—

(a) the procedure to be followed by the \[\text{F498} \text{CMA}\] if it cancels a block exemption;
(b) the procedure to be followed by the \[\text{F498} \text{CMA}\] if it withdraws the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation.

**Textual Amendments**

\[\text{F497}\] 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)

\[\text{F498}\] 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 \[\text{F499} \text{CMA}\] 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 \[\text{F499} \text{CMA}\] if \[\text{F485}\text{it}\] 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.
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 Rules may make provision as to the factors which the CMA may take into account when it is determining the date on which a direction given under paragraph 4(1) of Schedule 1 or paragraph 2(3) or 9(3) of Schedule 3 is to have effect.

Disclosure of information

12 (1) Rules may make provision as to the circumstances in which the CMA is to be required, before disclosing information given to it by a third party in connection with the exercise of any of the 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).
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 CMA in dealing with the application;
(c) the person or persons to whom notice of the CMA's response to the application is to be given.

Textual Amendments

F504 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.)
F505 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.)

Oral hearings: procedure

13A (1) Rules may make provision as to the procedure to be followed by the CMA in holding oral hearings as part of an investigation.

(2) Rules may, in particular, make provision as to the appointment of a person mentioned in sub-paragraph (3) who has not been involved in the investigation in question to—
(a) chair an oral hearing, and
(b) prepare a report following the hearing and give it to the person who is to exercise on behalf of the CMA its function of making a decision (within the meaning given by section 31(2)) as a result of the investigation.

(3) The persons are—
(a) a member of the CMA Board;
(b) a member of the CMA panel;
(c) a member of staff of the CMA.

(4) The report must—
(a) contain an assessment of the fairness of the procedure followed in holding the oral hearing, and
(b) identify any other concerns about the fairness of the procedure followed in the investigation which have been brought to the attention of the person preparing the report.
F507 Procedural complaints

13B (1) Rules may make provision as to arrangements to be made by the CMA for dealing with complaints about the conduct by the CMA of an investigation.

(2) Rules may, in particular, make provision as to—
   (a) the appointment of a person mentioned in sub-paragraph (3) who has not been involved in the investigation in question to consider any such complaint;
   (b) the time-table for the consideration of any such complaint.

(3) The persons are—
   (a) a member of the CMA Board;
   (b) a member of the CMA panel;
   (c) a member of staff of the CMA.

F508 Settling cases

13C Rules may make provision as to the procedure to be followed in a case where, during an investigation, one or more persons notify the CMA that 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 [F509 CMA] takes action under any of sections [F510 32 to 40] with respect to the enforcement of the provisions of this Part.
SCHEDULE 10

REGULATORS

PART I

MONOPOLIES

Textual Amendments

F511 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

Textual Amendments

F512 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)

F513 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)

F514 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,
Competition Act 1998 (c. 41)
SCHEDULE 10 – Regulators
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Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial
team to Competition Act 1998. Any changes that have already been made by the team appear in the
content and are referenced with annotations. (See end of Document for details) View outstanding changes

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)

F515 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)

F516 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 Competition Act 1980, the functions transferred by subsection (3) of section 36A of the 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.

F517 (3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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).”

F518 (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).”

F519 (9) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .
In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 43 of the Electricity Act 1989 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply.

Accordingly, that Act is amended as follows.

Section 43 is amended as follows.

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."}

\[F521\] (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).”

\[F522\] (9) .................................................

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**Textual Amendments**

\[F520\] 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)

\[F521\] 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)

\[F522\] 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.

**Marginal Citations**

\[M22\] 1980 c. 21.

\[M23\] 1989 c. 29.

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**Water**

5 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions exercisable by virtue of subsection (3) of section 31 of the 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.

\[F523\] (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.”

(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).”

(9) . . . . . . . . . . . . . . . . . . . . . . . . . .

(10) . . . . . . . . . . . . . . . . . . . . . . . . . .

(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),”.

(13) . . . . . . . . . . . . . . . . . . . . . . . . . .
Railways

6 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 67 of the 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—

“(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).”

(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),”.

Textual Amendments

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)
Competition Act 1998 (c. 41)
SCHEDULE 10 – Regulators

PART III

THE PROHIBITIONS: NORTHERN IRELAND

Electricity

1. In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by paragraph (3) of Article 46 of the Electricity (Northern Ireland) Order 1992 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply for Northern Ireland.

2. Accordingly, that Order is amended as follows.

3. 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.
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).

(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),”.

Textual Amendments

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.

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)

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)

Commencement Information

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.

Marginal Citations

1980 c. 21.

Gas

In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by paragraph (3) of Article 23 of the Gas (Northern Ireland) Order 1996 (functions with respect to competition) are no longer exercisable by the Director General of Gas for Northern Ireland.

Accordingly, that Order is amended as follows.

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).”

(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),”.

(9) ..........................................................

(10) ......................................................

(11) .....................................................

Textual Amendments

F532 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.

F533 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)

F534 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.
PART IV

UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

The Telecommunications Act 1984 (c. 12)

9 (1) The Telecommunications Act 1984 is amended as follows.

F535 (2) ..............................................................

F535 (3) ..............................................................

F535 (4) ..............................................................

F536 (5) ..............................................................

F537 (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 M32 Resale Prices Act 1976);

(b) after paragraph (m), insert—

“(n) the Competition Act 1998”.

(8) At the end of section 101, insert—

“(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

F535 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)

F536 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)

F537 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.

F538 (2) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(3) In section 25, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

F539 (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 Resale Prices Act 1976);

(b) after paragraph (n), insert—

“(o) the Competition Act 1998”.

(7) At the end of section 42, 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
F538 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)
F539 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—
(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;

(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 Restrictive
In section 57(3) (general restrictions on disclosure of information)—

(a) omit paragraphs (d) and (e) (which refer to the \textsuperscript{M36}Restrictive Trade Practices Act 1976 and the \textsuperscript{M37}Resale Prices Act 1976);

(b) after paragraph (no), insert—

“(nop) the Competition Act 1998”.

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.”
(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)—

(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, ”.

(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 Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;

(b) after the entry relating to the Railways Act 1993, insert the entry— “ The Competition Act 1998 ”.
Textual Amendments

F542 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)(vi)(u)

F543 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.

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 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.

F544 (2) ................................................

(3) In section 14, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

F545 (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—

   (a) ..............................................
   
   (b) in subsection (11), for “subsection (10)” substitute “ subsections (5A) and (10) “.


(9) In section 145(3) (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 (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


F545 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)

F546 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.; Sch. 10 para. 15(3)-(8), (9)(a) and (10) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.
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—

“(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the 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 undertaking in connection with the supply of railway services, so far as relating to the rail link.”

17 (1) The 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.

(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 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) 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.”

(7) 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 Resale Prices Act 1976);
   (b) after sub-paragraph (t), add—
      “(u) the Competition Act 1998”.

(8) 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 Restrictive Trade Practices Act 1976).

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**Textual Amendments**

F547 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.

F548 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)

F549 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.

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**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.; 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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**Marginal Citations**


M47 1976 c. 34.

M48 1976 c. 53.

M49 1976 c. 34.

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**The Gas (Northern Ireland) Order 1996**

18 (1) The Gas (Northern Ireland) Order 1996 is amended as follows.

F550 (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) 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) 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 Resale Prices Act 1976);

(b) after sub-paragraph (u), add—
“(v) the Competition Act 1998.”]

(7) [F552 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


F551 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.

F552 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.

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


M51 1976 c. 53.

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 [MS2]Restrictive Trade Practices Act 1976).

Textual Amendments

F554 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)


F556 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)

F557 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

Competition Act 1998 (c. 41)

SCHEDULE 12 – Minor and Consequential Amendments

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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 Restrictive Trade Practices Act 1976”; and
(b) after “the Coal Industry Act 1994”, insert “or the Competition Act 1998”.

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) For section 11(9) (which makes provision for certain functions of the Competition Commission under the 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) [F558In 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 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 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 Fair Trading Act 1973).


(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)—
(a) omit subsections (3) and (4).

Textual Amendments

F558 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)

F559 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)

F560 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.


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 Fair Trading Act 1973; and
(b) in the entry relating to the Competition Act 1980—
Competition Act 1998 (c. 41)
SCHEDULE 12 – Minor and Consequential Amendments
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(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.

The Airports Act 1986 (c.31)

Textual Amendments
F561 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)

Textual Amendments
F562 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).


Marginal Citations
M61 1976 c. 34.
M62 1976 c. 53.
Competition Act 1998 (c. 41)

SCHEDULE 12 – Minor and Consequential Amendments

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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.

The Channel Tunnel Act 1987 (c.53)

Textual Amendments


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)

Textual Amendments


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—
The Osteopaths Act 1993 (c.21)

Textual Amendments

The Chiropractors Act 1994 (c.17)

Textual Amendments

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
133 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).


Textual Amendments


The Broadcasting Act 1996 (c.55)

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).

SCHEDULE 13

PART I

GENERAL

Interpretation

(1) In this Schedule—

“RPA” means the 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 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.

**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.

**Textual Amendments**

<table>
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<tr>
<th>Code</th>
<th>Amendment Details</th>
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<tr>
<td>F568</td>
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**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.

**Textual Amendments**

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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;
   (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.
PART III

ON THE STARTING DATE

Applications which fall

(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.

Orders and approvals which fall

(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.

(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.

(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
   [F569(e) the Supreme Court.]

Textual Amendments
F569 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

135 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.

Commencement Information

136 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.

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.

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.
Cases for which there is no transitional period

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.

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

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

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.

(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—

(a) ...................................................

(b) a direction under section 194A(3) of the Broadcasting Act 1990 (“the 1990 Act”) is in force immediately before the starting date,

the transitional period lasts for five years.

(2) ...................................................

(3) Sub-paragraphs (1) ... do not affect the power of—

(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.

Textual Amendments

F570 Sch. 13 para. 26(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.

F571 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.

F572 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.

F573 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 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 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.
(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

(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.

(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 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.

(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 M67 Gas (Northern Ireland) Order 1996;
   “Department” means the Department of Economic Development.

Marginal Citations

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 [Railways Act 1993](https://www.legislation.gov.uk/) (“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.

(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.
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—

F574 (a) .........................

(b) in the case of the Director General of Gas Supply, the matters referred to in section 36A(3) and (4) of the M69 Gas Act 1986;

(c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the M70 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 M71 Electricity (Northern Ireland) Order 1992;

(e) in the case of the Water Services Regulation Authority, the matters referred to in section 31(3) of the M72 Water Industry Act 1991;

(f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the M73 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 M74 Gas (Northern Ireland) Order 1996.

F576 (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.

(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

F574 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)

F575 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)

F576 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. 1

Marginal Citations

M69 1986 c. 44.
M70 1989 c. 29.
M72 1991 c. 56.
M73 1993 c. 43.
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
“specified” means specified in rules made by the Director under section 51.

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 [F577 of the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000].
Competition Act 1998 (c. 41)
SCHEDULE 13 – Transitional Provisions and Savings

Document Generated: 2019-08-27

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial
team to Competition Act 1998. Any changes that have already been made by the team appear in the
content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments
F577 Words in Sch. 13 para. 37(2) inserted (1.3.2000) by S.I. 2000/311, art. 2

Modifications etc. (not altering text)
C60 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).

(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 [F578 or the Competition Act 1998 (Land
and Vertical Agreements Exclusion) Order 2000].

Textual Amendments
F578 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)
C60 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.

PART V

THE FAIR TRADING ACT 1973

References to the Monopolies and Mergers Commission

(1) If, on the date on which the repeal by this Act of a provision mentioned in subparagraph (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 Electricity (Northern Ireland) Order 1992;
(i) section 14(2) of the Railways Act 1993 (c. 43);
(j) article 36(3) of the M76 Airports (Northern Ireland) Order 1994;

(k) article 16(2) of the M77 Gas (Northern Ireland) Order 1996.

Orders under Schedule 8

41 (1) In this paragraph—

“the 1973 Act” means the M78 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.

(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.

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 M78 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.

PART VI

THE COMPETITION ACT 1980

Undertakings

(1) Subject to sub-paragraph (2), an undertaking accepted by the Director under section 4 or 9 of the 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

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

(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 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 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.

(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

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

**Repeals and Revocations**

### Part I

#### Repeals

**Commencement Information**

<table>
<thead>
<tr>
<th>Schedule 14 Pt. I</th>
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<td>I39 Sch. 14 Pt. I in force at 10.3.2013</td>
<td>in so far as not already in force by S.I. 2013/284, art. 2(c)</td>
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<tr>
<th>Chapter</th>
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<th>Extent of repeal</th>
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<tr>
<td></td>
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<td>Section 10(2).</td>
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<td>Section 45.</td>
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<tr>
<td></td>
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<td>Section 54(5).</td>
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<td></td>
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<td>Section 78(3).</td>
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</table>
| 1973 c. 41. | | 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 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,”. |
| 1973 c. 41. | | In section 83, in subsection (1) “Subject to subsection (1A) below” and subsection (1A). |
| 1973 c. 41. | | 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).


The whole Act.


The whole Act.


The whole Act.


Section 5.


The whole Act.


Sections 44 and 45.


In section 10(3), “or the Restrictive Trade Practices Act 1976.”


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) 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).


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).


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”.

In section 56(a)(ii), “or the 1980 Act”.

1986 c. 44. The Gas Act 1986. Section 25(2).

In section 27(1), “or section 10(2)(a) of the Competition Act 1980”.

In section 27(3)(a), from “or” to “competition reference”.

In section 27(6), “or the said Act of 1980”.

In section 28(5), the “or” immediately after paragraph (aa).
In section 36A(5), paragraph (d) and the “and” immediately before it.

In section 36A(6), “or (3)’.

In section 36A(8), “or under the 1980 Act”.

In section 36A(9), “or the 1980 Act”.

In section 42(3), paragraphs (e) and (f).


Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Competition Act 1998. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes
In section 57(3), paragraphs (d) and (e).


1990 c. 42. The Broadcasting Act 1990. In section 193(2), paragraph (c) and the “and” immediately before it.


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 (e) 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)”.

In section 31(9), “or the 1980 Act”.


1993 c. 21. The Osteopaths Act 1993. In section 33(4), paragraph (b) and the “or” immediately before it.
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<table>
<thead>
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<tbody>
<tr>
<td>1993 c. 43.</td>
<td>The Railways Act 1993.</td>
<td>In section 33(5), “or section 10 of the Act of 1980”. Section 14(2). In section 16(1), paragraph (b) and the “or” immediately before it. In section 16(2), paragraph (e) 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).</td>
</tr>
<tr>
<td>1994 c. 40.</td>
<td>The Deregulation and Contracting Out Act 1994.</td>
<td>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).</td>
</tr>
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</table>
### PART II

#### REVOCATIONS

**Commencement Information**

<table>
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<tr>
<th>Reference</th>
<th>Title</th>
<th>Extent of revocation</th>
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<tr>
<td>S.I. 1982/1080 (N.I.12).</td>
<td>The Agricultural Marketing (Northern Ireland) Order 1982.</td>
<td>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)”.</td>
</tr>
</tbody>
</table>

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;
(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 (e) 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.


In Article 45—
(a) in paragraph (1), “or section 10(2)(a) of the 1980 Act”;
(b) in paragraph (3), sub-paragraph (e) 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.


In Article 18—
(a) in paragraph (1), sub-paragraph (b) and the “or” immediately before it;
(b) in paragraph (3), sub-paragraph (e) 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 under the 1980 Act”;
(d) in paragraph (8), “or the 1980 Act”.
Article 44(4)(f) and (g).
Status:
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Changes to legislation:
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Changes and effects yet to be applied to :
– Pt. 1 Ch. 4 heading substituted by 2015 c. 15 Sch. 8 para. 2
– Pt. 1 Ch. 4 heading substituted by S.I. 2017/385 Sch. 1 para. 2
– Pt. 1 Ch. 4 cross-heading substituted by S.I. 2017/385 Sch. 2 para. 2
– s. 10 heading words substituted by S.I. 2019/93 reg. 3(2)
– s. 46 cross-heading substituted by 2015 c. 15 Sch. 8 para. 2
– s. 49 heading words inserted by S.I. 2017/385 Sch. 2 para. 7
– Pt. 2 omitted by S.I. 2019/93 reg. 24
– Pt. 2A omitted by S.I. 2019/93 reg. 24
– s. 10(1) omitted by S.I. 2019/93 reg. 3(4)
– s. 10(2) omitted by S.I. 2019/93 reg. 3(4)
– s. 10(3) words substituted by S.I. 2019/93 reg. 3(5)
– s. 10(4) words substituted by S.I. 2019/93 reg. 3(6)(a)
– s. 10(4)(a) omitted by S.I. 2019/93 reg. 3(6)(b)
– s. 10(4)(b) words substituted by S.I. 2019/93 reg. 3(6)(c)
– s. 10(5)(a) words inserted by S.I. 2019/93 reg. 3(7)(a)(ii)
– s. 10(5)(a) words substituted by S.I. 2019/93 reg. 3(7)(a)(i)
– s. 10(5)(d) words inserted by S.I. 2019/93 reg. 3(7)(b)
– s. 10(9)-(11) omitted by S.I. 2019/93 reg. 3(8)
– s. 11 omitted by S.I. 2019/93 reg. 5
– s. 25(3) omitted by S.I. 2019/93 reg. 6(2)
– s. 25(5) omitted by S.I. 2019/93 reg. 6(2)
– s. 25(7) omitted by S.I. 2019/93 reg. 6(2)
– s. 25(8)(a) words substituted by S.I. 2019/93 reg. 6(3)
– s. 25(9) omitted by S.I. 2019/93 reg. 6(4)
– s. 25(10) words substituted by S.I. 2019/93 reg. 6(5)
– s. 25(11) omitted by S.I. 2019/93 reg. 6(6)
– s. 25(12) words omitted by S.I. 2019/93 reg. 6(7)
– s. 31(2)(a) word inserted by S.I. 2019/93 reg. 8(a)
– s. 31(2)(c) omitted by S.I. 2019/93 reg. 8(b)
– s. 31(2)(d) omitted by S.I. 2019/93 reg. 8(b)
– s. 32 modified by 1991 c. 56, s. 105ZA(9)(a) (as inserted) by 2014 c. 21 s. 11(3)
– s. 32 modified by 1991 c. 56, s. 105ZB(4)(a) (as inserted) by 2014 c. 21 s. 11(3)
– s. 32 modified by 1991 c. 56, s. 110A(7)(a) (as substituted) by 2014 c. 21 s. 9(1)
– s. 32 modified by 1991 c. 56, s. 110B(5)(a) (as substituted) by 2014 c. 21 s. 9(1)
– s. 32 modified by 1991 c. 56, s. 117E(7)(a) (as inserted) by 2014 c. 21 Sch. 4
– s. 32 modified by 1991 c. 56, s. 40(7)(a) (as substituted) by 2014 c. 21 s. 8(1)
– s. 32 modified by 1991 c. 56, s. 40A(5)(a) (as substituted) by 2014 c. 21 s. 8(1)
– s. 32 modified by 1991 c. 56, s. 51B(9)(a) (as substituted) by 2014 c. 21 s. 10(3)
– s. 32 modified by 1991 c. 56, s. 51C(4)(a) (as substituted) by 2014 c. 21 s. 10(3)
– s. 32 modified by 1991 c. 56, s. 66D(7)(a) (as substituted) by 2014 c. 21 Sch. 2 para. 3
– s. 32(1) words omitted by S.I. 2019/93 reg. 9
– s. 33(1) words omitted by S.I. 2019/93 reg. 10
– s. 35(1) words substituted by S.I. 2019/93 reg. 11(a)
– s. 35(2) modified by 1991 c. 56, s. 105ZA(9)(b) (as inserted) by 2014 c. 21 s. 11(3)
– s. 35(2) modified by 1991 c. 56, s. 105ZB(4)(b) (as inserted) by 2014 c. 21 s. 11(3)
Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Blanket Amendment words substituted by 2005 c. 4 Sch. 11 para. 5

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(A1) inserted by S.I. 2019/93 reg. 3(3)
- s. 10(12) inserted by S.I. 2019/93 reg. 3(9)
- s. 10A inserted by S.I. 2019/93 reg. 4
- s. 25A(1)(b) words substituted by S.I. 2019/93 reg. 7
- s. 36(7A)(b)(ii) words omitted by S.I. 2019/93 reg. 12(c)(i)
- s. 36(7A)(b)(ii) words omitted by S.I. 2019/93 reg. 12(c)(ii)