



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

#### CHAPTER I

#### AGREEMENTS

#### *Exemptions*

#### **4 Individual exemptions.**

- (1) The Director 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 him 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 Director considers it appropriate to impose; and
  - (b) has effect for such period as the Director 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.

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- (6) On an application made in such way as may be specified by rules under section 51, the Director may extend the period for which an exemption has effect; but, if the rules so provide, he may do so only in specified circumstances.

## **5 Cancellation etc. of individual exemptions.**

- (1) If the Director has reasonable grounds for believing that there has been a material change of circumstance since he granted an individual exemption, he 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 Director has a reasonable suspicion that the information on which he based his decision to grant an individual exemption was incomplete, false or misleading in a material particular, he 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 Director, by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the Director 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 Director may act under subsection (1), (2) or (4) on his own initiative or on a complaint made by any person.

## **6 Block exemptions.**

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the Director, likely to be agreements to which section 9 applies, the Director 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—

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- (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 Director may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the Director considers that a particular agreement is not one to which section 9 applies, he 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 and section 7 “specified” means specified in a block exemption order.

## **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 Director 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 Director—
- (a) is opposed to its being so treated; and
  - (b) gives notice in writing to the party concerned of his opposition before the end of that period.
- (3) If the Director gives notice of his 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 Director sufficient time to consider whether to oppose under subsection (2).

## **8 Block exemptions: procedure.**

- (1) Before making a recommendation under section 6(1), the Director must—
- (a) publish details of his proposed recommendation in such a way as he 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 him.
- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the Director of the proposed modifications and take into account any comments made by the Director.
- (3) If, in the opinion of the Director, it is appropriate to vary or revoke a block exemption order he 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 his 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—

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- (a) inform the Director of the proposed variation or revocation; and
  - (b) take into account any comments made by the Director.
- (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.

## 9 The criteria for individual and block exemptions.

This section applies to any agreement which—

- (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; but
- (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.

## 10 Parallel exemptions.

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from the Community prohibition—
- (a) by virtue of a Regulation,
  - (b) because it has been given exemption by the Commission, or
  - (c) because it has been notified to the Commission under the appropriate opposition or objection procedure and—
    - (i) the time for opposing, or objecting to, the agreement has expired and the Commission has not opposed it; or
    - (ii) the Commission has opposed, or objected to, the agreement but has withdrawn its opposition or objection.
- (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 Community 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 the Community 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 Community 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 Director may—

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- (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 Director has the effect of cancelling the exemption.
- (8) In exercising his powers under this section, the Director may require any person who is a party to the agreement in question to give him such information as he may require.
- (9) For the purpose of this section references to an agreement being exempt from the Community prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation or a decision by the Commission.
- (10) In this section—
  - “the Community prohibition” means the prohibition contained in—
    - (a) paragraph 1 of Article 85;
    - (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 the Community 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 Article 88 of the Treaty on the question whether or not agreements of a particular kind are prohibited by Article 85 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.

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**Changes and effects yet to be applied to the whole Act, associated Parts and Chapters:**

- Blanket amendment text amended by S.I. 2011/1043 art. 3 4
- Blanket amendment text amended by S.I. 2011/1043 art. 3 6
- 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):**

- Pt. 2A inserted by S.I. 2004/1261 Sch. 1 para. 44
- s. 28A inserted by S.I. 2004/1261 Sch. 1 para. 14
- s. 30A by 2002 c. 40 s. 198
- s. 30A text amended by S.I. 2004/1261 Sch. 1 para. 16
- s. 31A-31E inserted by S.I. 2004/1261 Sch. 1 para. 18
- s. 47A by 2002 c. 40 s. 18(1)(2)
- s. 47A(7)(a) text amended by S.I. 2007/1846 reg. 3(2)
- s. 47A(7)(b) text amended by S.I. 2007/1846 Sch.
- s. 47A(7)(c) text amended by S.I. 2007/1846 Sch.
- s. 47A(7)(d) words substituted by 2005 c. 4 Sch. 9 para. 65(3)
- s. 47B by 2002 c. 40 s. 19
- s. 58A and cross-heading by 2002 c. 40 s. 20(1)(2)
- s. 58A(4)(a) text amended by S.I. 2007/1846 Sch.
- s. 58A(4)(b) text amended by S.I. 2007/1846 Sch.
- s. 58A(4)(c) words substituted by 2005 c. 4 Sch. 9 para. 65(4)
- s. 62A inserted by S.I. 2004/1261 Sch. 1 para. 38
- s. 62B inserted by S.I. 2004/1261 Sch. 1 para. 39
- s. 65A 65B inserted by S.I. 2004/1261 Sch. 1 para. 43
- s. 75A inserted by S.I. 2004/1261 Sch. 1 para. 47
- s. 121 modified by S.I. 2003/1397 art. 3(5)
- Sch. 6A inserted by S.I. 2004/1261 Sch. 1 para. 52
- Sch. 7A by 2002 c. 40 s. 187 Sch. 12
- Sch. 7A by 2002 c. 40 s. 187(4)
- Sch. 7A para. 1 amended by S.I. 2003/1592 Sch. 4 para. 15(3)
- Sch. 7A para. 1 text amended by 2003 c. 21 Sch. 17 para. 154
- Sch. 7A para. 1 text amended by 2003 c. 21 Sch. 19(1)
- Sch. 7A para. 1 text amended by S.I. 2005/3172 Sch. para. 3(b)
- Sch. 24 para. 13 excluded by S.I. 2003/1397 art. 3(6)
- Long Title text amended by S.I. 2004/1261 Sch. 1 para. 1

**Commencement Orders yet to be applied to the Competition Act 1998:**

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2003/708 art. 2 commences (2001 c. 16)
- S.I. 2003/766 art. 2 commences (2002 c. 40)
- S.I. 2003/1397 art. 2 commences (2002 c. 40)
- S.I. 2003/1900 art. 2 commences (2003 c. 21)
- S.I. 2003/2681 art. 2 commences (2003 c. 20)
- S.I. 2003/3142 art. 2-4 commences (2002 c. 11 and 2003 c. 21)
- S.I. 2004/641 art. 2-5 commences (2003 c. 37)
- S.I. 2004/827 art. 2-4 commences (2003 c. 20)
- S.I. 2004/1376 art. 2 3 commences (2001 c. 16)
- S.I. 2004/1866 art. 2 commences (2002 c. 40)
- S.I. 2004/2528 art. 2-3 commences (2003 c. 37)

- S.I. 2004/2575 art. 2 Sch. 1 2 commences (2004 c. 20)
- S.I. 2004/3233 art. 2 commences (2002 c. 40)
- S.I. 2004/3322 art. 2 Sch. 1-3 commences (1989 c. 40 and 2004 c. 27)
- S.I. 2005/968 art. 2 3 commences (2003 c. 37)
- S.I. 2005/2714 art. 2-4 commences (2003 c. 37)
- S.I. 2009/107 art. 2-5 Sch. 1-5 Commencement Order
- S.I. 2009/579 art. 2 commences (2008 c. 26)
- S.I. 2009/1604 art. 2 commences (2005 c. 4)
- S.I. 2011/2329 art. 2 3 commences (2011 c. 5)
- S.R. 2003/203 art. 2 commences (S.I. 2003/419 (N.I.))
- S.R. 2005/514 art. 2 commences (S.I. 2005/1454 (N.I.))
- S.R. 2007/194 art. 2 commences (S.I. 2006/3336 (N.I.))