



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

#### CHAPTER III

#### INVESTIGATION AND ENFORCEMENT

#### *Enforcement*

### **38 The appropriate level of a penalty.**

- (1) The [<sup>F1</sup>CMA] must prepare and publish guidance as to the appropriate amount of any penalty under this Part [<sup>F2</sup> in respect of an infringement of [<sup>F3</sup>the Chapter 1 prohibition or the Chapter 2 prohibition.]]

<sup>F4</sup>[<sup>F5</sup>(1A) . . . . .]

- (2) The [<sup>F1</sup>CMA] may at any time alter the guidance.
- (3) If the guidance is altered, the [<sup>F1</sup>CMA] must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The [<sup>F6</sup>CMA] may, after consulting the Secretary of State, choose how [<sup>F7</sup>it] publishes [<sup>F7</sup>its] guidance.
- (6) If the [<sup>F6</sup>CMA] is preparing or altering guidance under this section [<sup>F7</sup>it] must consult such persons as [<sup>F7</sup>it] considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

*Changes to legislation: Competition Act 1998, Section 38 is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(8) When setting the amount of a penalty under this Part <sup>F8</sup> in respect of an infringement of a kind mentioned in subsection (1) , the <sup>F9</sup>CMA<sup>F10</sup> and the Tribunal ] must have regard to the guidance for the time being in force under this section.

<sup>F11</sup>(9) .....

<sup>F12</sup>(10) .....

### Textual Amendments

- F1** Word in s. 38(1)-(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 22** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Words in s. 38(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 40(4)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F3** Words in s. 38(1) substituted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **13(a)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)
- F4** S. 38(1A) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **13(b)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)
- F5** S. 38(1A) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 23(2)**
- F6** Word in s. 38(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 22** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 38 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(30)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F8** Words in s. 38(8) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 40(6)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F9** Word in s. 38(8)(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 22** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in s. 38(8) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 44(3)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F11** S. 38(9) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **13(c)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)
- F12** S. 38(10) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **13(c)** (with Sch. 4 paras. 7, 13) (as amended by S.I. 2020/1343, regs. 35-59); 2020 c. 1, Sch. 5 para. 1(1)

### Commencement Information

- I1** S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 76(3); s. 38(1)-(7) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; s. 38(8)-(10) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

### Changes to legislation:

Competition Act 1998, Section 38 is up to date with all changes known to be in force on or before 26 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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### 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. 31G-31L and cross-heading inserted by S.I. 2019/93, reg. 8A (as inserted) by [S.I. 2019/1245 reg. 3](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 46(3)(ha)(hb) inserted by S.I. 2019/93, reg. 14(d) (as inserted) by [S.I. 2019/1245 reg. 5](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 47(1)(ca) inserted by S.I. 2019/93, reg. 15(b) (as substituted) by [S.I. 2019/1245 reg. 6](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 60A(10) inserted by [2023 c. 28 s. 6\(10\)](#)
- Sch. 6A para. 1A inserted by S.I. 2019/93, reg. 29A(2) (as inserted) by [S.I. 2019/1245 reg. 7](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- Sch. 6A Pt. 3 inserted by S.I. 2019/93, reg. 29A(4) (as inserted) by [S.I. 2019/1245 reg. 7](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)