
STATUTORY INSTRUMENTS

2001 No. 2916

**The EC Competition Law (Articles 84
and 85) Enforcement Regulations 2001**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 and shall come into force on the day after the day on which they are laid before Parliament.

(2) These Regulations shall extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Competition Act 1998⁽¹⁾;

“the 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;

“the Director” means the Director General of Fair Trading;

“document” includes information recorded in any form;

“information” includes estimates and forecasts;

“investigating officer” has the meaning given in regulation 13(1);

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

“person”, in addition to the meaning given by the Interpretation Act 1978⁽²⁾, includes any undertaking;

“premises” does not include domestic premises unless—

- (a) they are also used in connection with the affairs of an undertaking, or
 - (b) documents relating to the affairs of an undertaking are kept there,
- but does include any vehicle;

“President” means the person appointed under paragraph 4 of Schedule 7 to the Act;

“the 1996 Regulations” means the EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996⁽³⁾;

“tribunal” means an appeal tribunal established in accordance with the provisions of Part III of Schedule 7 to the Act; and

(1) 1998 c. 41.

(2) 1978 c. 30.

(3) S.I.1996/2199.

“tribunal rules” means the rules made in accordance with section 48(2) of the Act.

(2) References in these Regulations to Articles are references to Articles of the treaty establishing the European Community⁽⁴⁾.

(3) Any provision of these Regulations 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).

(4) Paragraph (3) above does not apply where the context otherwise requires.

(5) For the purposes of these Regulations, 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.

(6) Any power conferred on the Director by these Regulations to require information includes the power to require any document which he believes may contain that information.

Commencement of investigations by the Director

3.—(1) If it appears to the Director that the United Kingdom might have a duty under Article 84 to rule on the question—

- (a) whether or not there is or has been in existence an agreement which infringes or has infringed the prohibition in Article 81(1), or
- (b) whether or not conduct constitutes an infringement of the prohibition in Article 82,

he may commence an investigation under these Regulations.

(2) The Director may conclude that the United Kingdom might have such a duty if—

- (a) there are reasonable grounds for suspecting that there is or has been in existence an agreement which may infringe the prohibition in Article 81(1),
- (b) there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed,
- (c) a party to an agreement applies for an agreement to be considered under regulation 7, or
- (d) a person applies for conduct to be considered under regulation 10.

Exemptions

4.—(1) The Director may grant an exemption from the prohibition in Article 81(1) with respect to a particular agreement if—

- (a) a request for an exemption has been made to him under regulation 7 by a party to the agreement; and
- (b) the conditions for application of Article 81(3) are met.

(2) 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.

(3) That period must be specified in the grant of the exemption.

(4) On an application in accordance with the rules set out in Schedule 1, the Director may, in accordance with those rules, extend the period for which an exemption has effect.

(4) References in these Regulations to Articles of the Treaty are to Articles as renumbered by the Treaty signed at Amsterdam on 2nd October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts.

Cancellation etc. of exemptions

5.—(1) If the Director has reasonable grounds for believing that there has been a material change of circumstance since he granted an 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 exemption was incomplete, false or misleading in a material particular, he may by notice in writing take any of the steps mentioned in paragraph (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 paragraph (1).

(5) Any step taken by the Director under paragraph (1), (2) or (4) has effect from such time as may be specified in the notice.

(6) If an exemption is cancelled under paragraph (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 paragraph (1), (2) or (4) on his own initiative or on a complaint made by any person.

Notification in relation to agreements

6.—(1) Regulation 7 provides for an agreement to be examined by the Director on the application of a party to the agreement who thinks that it may infringe the prohibition in Article 81(1).

(2) Schedule 1 provides for the procedure to be followed—

- (a) by any person making such an application; and
- (b) by the Director, in considering such an application.

Notification for a decision in relation to agreements

7.—(1) A party to an agreement who applies for the agreement to be examined under this regulation must—

- (a) notify the Director of the agreement; and
- (b) apply to him for a decision.

(2) On an application under this regulation, the Director may make a decision as to whether the prohibition in Article 81(1) has been infringed.

(3) If an agreement is notified to the Director under this regulation, the application may include a request for the agreement to which it relates to be granted an exemption.

Effect of a decision that the prohibition in Article 81(1) has not been infringed

8.—(1) This regulation applies to an agreement if the Director has determined an application under regulation 7 by making a decision that the agreement has not infringed the prohibition in Article 81(1).

(2) The Director is to take no further action under these Regulations with respect to the agreement unless—

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

- (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular; or
- (c) pursuant to Article 85(2), the European Commission has taken a reasoned decision recording an infringement of Article 81(1) and has authorised the United Kingdom to take measures needed to remedy the situation.

Notification in relation to conduct

9.—(1) Regulation 10 provides for conduct of a person which that person thinks may infringe the prohibition in Article 82 to be considered by the Director on the application of that person.

- (2) Schedule 1 provides for the procedure to be followed—
 - (a) by any person making an application, and
 - (b) by the Director, in considering an application.

Notification for a decision in relation to conduct

10.—(1) A person who applies for conduct to be considered under this regulation must—

- (a) notify the Director of it; and
- (b) apply to him for a decision.

(2) On an application under this regulation the Director may make a decision as to whether the prohibition in Article 82 has been infringed.

Effect of a decision that the prohibition in Article 82 has not been infringed

11.—(1) This regulation applies to conduct if the Director has determined an application under regulation 10 by making a decision that the conduct has not infringed the prohibition in Article 82.

(2) The Director is to take no further action under these Regulations with respect to the conduct unless—

- (a) he has reasonable grounds for believing that there has been a material change of circumstance since he gave his decision; or
- (b) he has a reasonable suspicion that the information on which he based his decision was incomplete, false or misleading in a material particular; or
- (c) pursuant to Article 85(2), the European Commission has taken a reasoned decision recording an infringement of Article 82 and has authorised the United Kingdom to take measures needed to remedy the situation.

Powers when conducting investigations

12.—(1) For the purposes of an investigation under regulation 3, the Director may require any person to produce to him a specified document, or to provide him with specified information, which he considers relates to any matter relevant to the investigation.

- (2) The power conferred by paragraph (1) is to be exercised by a notice in writing.
- (3) A notice under paragraph (2) must indicate—
 - (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the offences created by regulations 22 to 24.
- (4) In paragraph (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 Director 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 paragraph 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.

Power to enter premises without a warrant

13.—(1) Any officer of the Director who is authorised in writing by the Director to do so (“an investigating officer”) may enter any premises in connection with an investigation under regulation 3.

(2) No investigating officer is to enter any premises in the exercise of his powers under this regulation 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 regulations 22 to 24.

(3) Paragraph (2) does not apply—

- (a) if the Director has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which he is investigating under regulation 3; or
 - (ii) an undertaking the conduct of which he is investigating under regulation 3; 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 paragraph (3), the power of entry conferred by paragraph (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 paragraph (2)(b) and (c).

(5) An investigating officer entering any premises under this regulation 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 held in a computer 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.

Powers to enter premises under a warrant

14.—(1) On an application made by the Director to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—

- (a) there are reasonable grounds for suspecting that there are on any premises documents—
 - (i) the production of which has been required under regulation 12 or 13; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any premises documents which the Director has power under regulation 12 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 regulation 13 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 regulation.

(2) A warrant under this regulation shall authorise a named officer of the Director, and any other of his officers whom he 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 paragraph (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 subparagraph (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 held in a computer 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.

(3) If, in the case of a warrant under paragraph (1)(b), the judge 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 paragraph (2) to be taken in relation to any such document.

(4) Any person entering premises by virtue of a warrant under this regulation 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 regulation, 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 regulation 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 paragraph (2)(c) may be retained for a period of three months.

Entry of premises under warrant: supplementary

15.—(1) A warrant issued under regulation 14 must indicate—

- (a) the subject matter and purpose of the investigation;
- (b) the nature of the offences created by regulations 22 to 24.

(2) The powers conferred by regulation 14 are to be exercised on production of a warrant issued under that regulation.

(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 regulation—

- “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.

Privileged communications

16.—(1) A person shall not be required, under any provision of these Regulations, 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 regulation 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.

Decisions following an investigation

17.—(1) Paragraph (2) applies if, as the result of an investigation conducted under regulation 3, the Director proposes to make—

- (a) a decision that the prohibition in Article 81(1) has been infringed, or
 - (b) a decision that the prohibition in Article 82 has been infringed.
- (2) Before making the decision, the Director 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.

Directions in relation to agreements

18.—(1) If—

- (a) the Director has made a decision that an agreement infringes the prohibition in Article 81(1), or
- (b) pursuant to Article 85(2) the European Commission has taken a reasoned decision recording an infringement of Article 81(1) and has authorised the United Kingdom to take measures needed to remedy the situation,

the Director may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.

(2) Paragraph (1)(a) applies whether the Director's decision is made on his own initiative or on an application made to him under these Regulations.

- (3) A direction under this regulation 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 regulation must be given in writing.

Directions in relation to conduct

19.—(1) If—

- (a) the Director has made a decision that conduct infringes the prohibition in Article 82, or
- (b) pursuant to Article 85(2) the European Commission has taken a reasoned decision recording an infringement of Article 82 and has authorised the United Kingdom to take measures needed to remedy the situation,

the Director may give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end.

(2) Paragraph (1)(a) applies whether the Director's decision is made on his own initiative or on an application made to him under these regulations.

- (3) A direction under this regulation 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 regulation must be given in writing.

Enforcement of Directions

20.—(1) If a person fails, without reasonable excuse, to comply with a direction under regulation 18 or 19, the Director 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 paragraph (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 paragraph (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

Interim measures

21.—(1) This regulation applies if the Director—

- (a) has a reasonable suspicion that an agreement is or has been in existence which may infringe the prohibition in Article 81(1), or
- (b) has a reasonable suspicion that the prohibition in Article 82 has been infringed,

but has not completed his investigation into the matter.

(2) If the Director considers that it is necessary for him to act under this regulation as a matter of urgency for the purpose—

- (a) of preventing serious, irreparable damage to a particular person or category of person, or
- (b) of protecting the public interest,

he may give such directions as he considers appropriate for that purpose.

(3) Before giving a direction under this regulation, the Director must—

- (a) give written notice to the person (or persons) to whom he proposes to give the direction; and
- (b) give that person (or each of them) an opportunity to make representations.

(4) A notice under paragraph (3) must indicate the nature of the direction which the Director is proposing to give and his reasons for wishing to give it.

(5) A direction given under this regulation has effect while paragraph (1) applies, but may be replaced if the circumstances permit by a direction under regulation 18 or, as appropriate, regulation 19.

(6) In a case where it is suspected that there may be an infringement of the prohibition in Article 81(1), regulations 18(3) and 20 also apply to directions given under this regulation.

(7) In the case of a suspected infringement of the prohibition in Article 82, regulations 19(3) and 20 also apply to directions given under this regulation.

Offences

22.—(1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under regulations 12, 13 or 14.

(2) If a person is charged with an offence under paragraph (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 paragraph (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 regulation 12 or 13 is not an offence if the person imposing the requirement has failed to act in accordance with that regulation.

(5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under regulation 13.

- (6) A person guilty of an offence under paragraph (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 regulation 14 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.

Destroying or falsifying documents

23.—(1) A person is guilty of an offence if, having been required to produce a document under regulation 12, 13 or 14—

- (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 paragraph (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.

False or misleading information

24.—(1) If information is provided by a person to the Director in connection with any function of the Director under these Regulations, 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 Director in connection with any of his functions under these Regulations, is guilty of an offence.

- (3) A person guilty of an offence under this regulation 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.

Appeals

25.—(1) Any party to an agreement in respect of which the Director has made a decision may appeal to the tribunal against, or with respect to, the decision.

(2) Any person in respect of whose conduct the Director has made a decision may appeal to the tribunal against, or with respect to, the decision.

- (3) In this regulation “decision” means a decision of the Director—
 - (a) as to whether the prohibition in Article 81(1) has been infringed,
 - (b) as to whether the prohibition in Article 82 has been infringed,
 - (c) as to whether to grant an exemption,
 - (d) in respect of an exemption—
 - (i) as to whether to impose any condition or obligation under regulation 4(2)(a) or 5(1)(c),
 - (ii) where such a condition or obligation has been imposed, as to the condition or obligation,
 - (iii) as to the period fixed under regulation 4(2)(b),
 - (e) as to—
 - (i) whether to extend the period for which an exemption has effect, or
 - (ii) the period of any such extension,
 - (f) cancelling an exemption,
 - (g) withdrawing or varying a decision in paragraph (a) to (f) following an application under regulation 26,

and includes a direction given under regulation 18, 19 or 21.

(4) The making of an appeal under this regulation does not suspend the effect of the decision to which the appeal relates.

(5) Schedule 2 makes further provision about appeals.

Third party appeals

26.—(1) A person who does not fall within regulation 25(1) or (2) may apply to the Director asking him to withdraw or vary a decision (“the relevant decision”) falling within paragraphs (a) to (f) of regulation 25.

- (2) The application must—
 - (a) be made in writing, within such period as is specified in the rules in Schedule 1; and
 - (b) give the applicant’s reasons for considering that the relevant decision should be withdrawn or (as the case may be) varied.
- (3) If the Director decides—
 - (a) that the applicant does not have a sufficient interest in the relevant decision,

(b) that, in the case of an applicant claiming to represent persons who have such an interest, the applicant does not represent such persons, or

(c) that the persons represented by the applicant do not have such an interest,

he must notify the applicant of his decision.

(4) If the Director, having considered the application, decides that it does not show sufficient reason why he should withdraw or vary the relevant decision, he must notify the applicant of his decision.

(5) Otherwise, the Director must deal with the application in accordance with the rules in Schedule 1.

(6) The applicant may appeal to the tribunal against a decision of the Director notified under paragraph (3) or (4).

(7) The making of an application does not suspend the effect of the relevant decision.

Appeal tribunals

27.—(1) Any appeal made to the tribunal under regulation 25 or 26 is to be determined by a tribunal constituted by the President in accordance with paragraph 27 of Schedule 7 to the Act.

(2) The tribunal rules shall apply to an appeal under regulation 25 or 26 save that any reference in the tribunal rules to the provisions of the Act shall be deemed to be to the equivalent provisions in these Regulations.

Appeals on point of law etc.

28.—(1) An appeal lies on a point of law arising from a decision of the tribunal.

(2) An appeal under this regulation may be made only—

(a) to the appropriate court;

(b) with permission and in accordance with the requirements of the tribunal rules; and

(c) at the instance of a party or at the instance of a person who has a sufficient interest in the matter.

(3) In paragraph (2)—

“the appropriate court” means—

(a) in relation to proceedings before a tribunal in England and Wales, the Court of Appeal;

(b) in relation to proceedings before a tribunal in Scotland, the Court of Session;

(c) in relation to proceedings before a tribunal in Northern Ireland, the Court of Appeal in Northern Ireland;

“party”, in relation to a decision, means a person who was a party to the proceedings in which the decision was made; and

“permission” means permission of the tribunal in question or of the appropriate court.

General restrictions on disclosure of information

29.—(1) No information which—

(a) has been obtained under or as a result of any provision of these Regulations, and

(b) relates to the affairs of any individual or to any particular business of an undertaking, is to be disclosed during the lifetime of that individual or while that business continues to be carried on, unless the condition mentioned in paragraph (2) is satisfied.

- (2) The condition is that consent to the disclosure has been obtained from—
- (a) the person from whom the information was initially obtained under or as a result of any provision of these Regulations (if the identity of that person is known); and
 - (b) if different—
 - (i) the individual to whose affairs the information relates, or
 - (ii) the person for the time being carrying on the business to which the information relates.
- (3) Paragraph (1) does not apply to a disclosure of information—
- (a) made for the purpose of—
 - (i) facilitating the performance of any functions of the Director, the Civil Aviation Authority, the Competition Commission, or the Secretary of State under these Regulations, or the Fair Trading Act 1973⁽⁵⁾, or the Competition Act 1980⁽⁶⁾, or the Civil Aviation Act 1982⁽⁷⁾, or the Airports Act 1986⁽⁸⁾; or the Licensing of Air Carriers Regulations 1992⁽⁹⁾, or Part IV of the Airports (Northern Ireland) Order 1994⁽¹⁰⁾, or Part I of the Transport Act 2000⁽¹¹⁾ or the Act;
 - (ii) facilitating the performance of any functions of the European Commission in respect of Community law about competition;
 - (iii) facilitating the performance by the Comptroller and Auditor General of any of his functions;
 - (iv) criminal proceedings in any part of the United Kingdom;
 - (b) made with a view to the institution of, or otherwise for the purposes of, civil proceedings brought under or in connection with these Regulations;
 - (c) made in connection with the investigation of any criminal offence triable in the United Kingdom or in any part of the United Kingdom; or
 - (d) which is required to meet a Community obligation.
- (4) If information is disclosed to the public in circumstances in which the disclosure does not contravene paragraph (1), that paragraph does not prevent its further disclosure by any person.
- (5) A person who contravenes this regulation is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Director to have regard to certain matters in relation to the disclosure of information

30.—(1) This regulation applies if the Director is considering whether to disclose any information acquired by him under, or as a result of, any provision of these Regulations.

(2) He must have regard to the need for excluding, so far as is practicable, information the disclosure of which would in his opinion be contrary to the public interest.

(3) He must also have regard to—

- (a) the need for excluding, so far as is practicable—

⁽⁵⁾ 1973 c. 41.

⁽⁶⁾ 1980 c. 21.

⁽⁷⁾ 1982 c. 16.

⁽⁸⁾ 1986 c. 31.

⁽⁹⁾ S.I. 1992/2992.

⁽¹⁰⁾ S.I. 1994/426 (N.I. 1).

⁽¹¹⁾ 2000 c. 38.

- (i) commercial information the disclosure of which would, or might, in his opinion, significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, in his opinion, significantly harm his interests; and
- (b) the extent to which the disclosure is necessary for the purposes for which the Director is proposing to make the disclosure.

Defamation

31. For the purposes of the law relating to defamation, absolute privilege attaches to any advice, notice or direction given, or decision made, by the Director in the exercise of any of his functions under these Regulations.

Findings of fact by the Director

32.—(1) Unless the court directs otherwise or the Director has decided to take further action in accordance with regulation 8(2) or 11(2), a Director’s finding which is relevant to an issue arising in proceedings which are brought otherwise than by the Director in respect of an alleged infringement under these Regulations of the prohibition in Article 81(1) or of the prohibition in Article 82 is binding on the parties if—

- (a) the time for bringing an appeal in respect of the finding has expired and the relevant party has not brought such an appeal; or
- (b) the decision of a tribunal on such an appeal has confirmed the finding.

(2) In this regulation—

“a Director’s finding” means a finding of fact made by the Director in the course of—

- (a) determining an application for a decision under regulation 7 or 10, or
- (b) conducting an investigation under regulation 3;

“relevant party” means—

- (a) in relation to the prohibition in Article 81(1), a party to the agreement which is alleged to have infringed the prohibition; and
- (b) in relation to the prohibition in Article 82, 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 the Director to the court in the proceedings referred to in paragraph (1).

Offences by bodies corporate etc.

33.—(1) This regulation applies to an offence under any of regulations 22 to 24 or 29(5).

(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 paragraph (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, paragraph (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 paragraph (5) “partner” includes a person purporting to act as a partner.

Crown application

34.—(1) Any provision made by or under these Regulations binds the Crown except that—

- (a) the Crown is not criminally liable as a result of any such provisions; and
- (b) nothing in these Regulations affects Her Majesty in her private capacity.

(2) Paragraph (1)(a) does not affect the application of any provision of these Regulations in relation to persons in the public service of the Crown.

(3) Paragraph (1)(b) is to be interpreted as if section 38(3) of the Crown Proceedings Act 1947⁽¹²⁾ (interpretation of references in that Act to Her Majesty in her private capacity) were contained in these Regulations.

(4) If, in a case where it is suspected that there may be an infringement of the prohibition in Article 81(1) or in respect of a suspected infringement of the prohibition in Article 82 otherwise than by the Crown or a person in the public service of the Crown, an investigation is conducted under regulation 3—

- (a) the power conferred by regulation 13 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) regulation 14 does not apply in relation to land so occupied.

(5) In any case in which consent is required under paragraph (4), the person who is the appropriate person in relation to that case is—

- (a) in relation to any land which is occupied by a government department that department; and
- (b) in relation to any other land which is otherwise occupied for purposes of the Crown the person occupying the land for such purposes.

(6) 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 regulation 13, or
- (b) that may be conferred by a warrant under regulation 14,

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.

(7) Any amendment of an enactment made by these Regulations binds the Crown to the extent that the enactment amended binds the Crown.

(12) 1973 c. 41.

Amendments to other enactments

35.—(1) In section 133(2)(a) of the Fair Trading Act 1973(**13**) for the words “EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996” there shall be substituted the words “EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001”.

(2) In section 19(3)(q) of the Competition Act 1980(**14**) for the words “the EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996” there shall be substituted the words “the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001”.

(3) In section 74(3)(o) of the Airports Act 1986(**15**) for the words “the EC Competition Law Enforcement Regulations 1996” there shall be substituted the words “the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001”.

(4) In article 49(3)(r) of the Airports (Northern Ireland) Order 1994(**16**) for the words “the EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996” there shall be substituted the words “the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001”.

(5) In paragraph 1(o) of Schedule 11 to the Act for the words “the EC Competition Law (Articles 88 and 89) Enforcement Regulations 1996” there shall be substituted the words “the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001”.

Past agreements and infringements

36. Nothing in these Regulations shall enable or require the Director to investigate or make a decision in relation to an agreement which was determined, or on conduct which has ceased, before 28th August 1996 being the date on which the 1996 Regulations came into force.

Revocation and transitional provision

37.—(1) Subject to paragraph (2), the 1996 Regulations are hereby revoked.

(2) Any information which was obtained under or by virtue of the provisions of the 1996 Regulations and which was subject to the restrictions on disclosure of information in regulation 28 of the 1996 Regulations shall be treated as if it was information obtained under or as a result of a provision of these Regulations.

15th August 2001

Alan Johnson
Minister of State for the Regions and
Employment Relations,
Department of Trade and Industry

(13) 1980 c. 21.

(14) 1986 c. 31.

(15) S.I. 1994/426 (N.I. 1).

(16) 1947 c. 44.