
EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make provision for implementing 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 (OJ L 001, 04.1.03, P.1-25: “the EC Competition Regulation”) and for the alignment of the domestic competition regime in the Competition Act 1998 (c. 41: “the 1998 Act”) and the new European competition regime provided for in the EC Competition Regulation.

Provision for implementing the EC Competition Regulation is made under section 2(2) of the European Communities Act 1972 (c. 68) and provision for aligning the domestic competition regime and the new European competition regime is made under section 209 of the Enterprise Act 2002 (c. 40).

References in these Regulations to Articles of the Treaty are to Articles of the Treaty establishing the European Community as renumbered by the Treaty of Amsterdam.

Subject to the possibility of satisfying the conditions set out in Article 81(3) of the Treaty, Article 81(1) of the Treaty prohibits agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the common market and which may affect trade between Member States. Article 82 of the Treaty prohibits the abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

Article 3 of the EC Competition Regulation provides that where national competition authorities or national courts apply national competition law to agreements within the meaning of Article 81(1) of the Treaty which may affect trade between Member States within the meaning of that provision, they shall also apply Article 81 of the Treaty to such agreements; and that where national competition authorities or national courts apply national competition law to any abuse prohibited by Article 82 of the Treaty, they shall also apply Article 82 of the Treaty. Article 5 of the EC Competition Regulation empowers national competition authorities to apply Articles 81 and 82 of the Treaty in individual cases. The investigation and enforcement by national competition authorities of suspected infringements of Articles 81 and 82 of the Treaty is, however, left to national law by the EC Competition Regulation and requires implementation by Member States.

Article 35 of the EC Competition Regulation provides that Member States shall designate the competition authority or authorities responsible for the application of Articles 81 and 82 of the Treaty in such a way that the provisions of that Regulation are effectively complied with. Regulation 3 of these Regulations designates national competition authorities pursuant to Article 35 of the EC Competition Regulation. The Office of Fair Trading is designated as a national competition authority for the purposes of Chapters I, II, IV, V, VIII and IX of the EC Competition Regulation; and those sector regulators who are mentioned in section 54(1) of the 1998 Act are designated as national competition authorities for the purposes of Chapters I, II, IV, VIII and IX of the EC Competition Regulation.

Regulation 4 of these Regulations amends the 1998 Act for the purposes of implementing the EC Competition Regulation and for alignment of the domestic competition regime and the European competition regime provided for in the EC Competition Regulation.

Regulation 5 of these Regulations amends enactments other than the 1998 Act for the purposes of implementing the EC Competition Regulation and for the alignment of the domestic competition regime and the European competition regime provided for in the EC Competition Regulation.

Regulations 6, 7, 8 and 9 of these Regulations make savings and consequential provision.

Schedule 1 specifies the amendments to the 1998 Act that are made by regulation 4.

Changes to legislation: There are currently no known outstanding effects for the The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004. (See end of Document for details)

Schedule 2 specifies the amendments to enactments other than the 1998 Act that are made by regulation 5.

These Regulations come into force on 1 May 2007 for the purposes of regulation 4 as it gives effect to paragraphs 50(a) and 54(8) of Schedule 1 and on 1 May 2004 for all other purposes. A Regulatory Impact Assessment and a Transposition Note have been prepared. Copies can be obtained from the Modernisation Project Team, Consumer and Competition Policy Directorate, Bay 606, 1 Victoria Street, London SW1H 0ET, telephone 020 7215 2174. Copies can also be found at <http://www.dti.gov.uk/ccp/consultations.htm>.

Changes to legislation:

There are currently no known outstanding effects for the The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004.