

SCHEDULE 1

Amendments to the Competition Act 1998

37.—(1) Section 62 (power to enter premises: Commission investigations) is amended as follows.

(2) In subsection (1)—

- (a) for the word “may” there is substituted “ shall ”;
- (b) for the words “a Commission investigation is being, or is likely to be, obstructed” there is substituted—
 - “(a) the Commission has ordered an Article 20 inspection;
 - (b) the Article 20 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 20 inspection.”.

(3) In subsection (2)—

- (a) for the words “A Commission investigation” there is substituted “ An Article 20 inspection ”;
- (b) in paragraph (a)—
 - (i) for the words “an official of the Commission (“the Commission official”)” there is substituted “ a Commission official ”;
 - (ii) for the words “the provision under which the investigation is being conducted” there is substituted “ Article 20(3) of the EC Competition Regulation ”; and
 - (iii) for the words “premises” there is substituted “ any business premises ”.
- (c) in paragraph (b)—
 - (i) the words “on the premises” shall cease to have effect;
 - (ii) after the words “suspecting that there are” there is inserted “ on any business premises ”.

(4) In subsection (3)—

- (a) for the words “A Commission investigation” there is substituted “ An Article 20 inspection ”;
- (b) the words “on the premises” shall cease to have effect;
- (c) after the words “suspecting that there are” there is inserted “ on any business premises ”;
- (d) in paragraph (a),
 - (i) for the words “an official of the Commission” there is substituted “ a Commission official ”;
 - (ii) for the words “the provision under which the investigation is being conducted” there is substituted “ Article 20(3) of the EC Competition Regulation ”.

(5) In subsection (4)—

- (a) for the words “A Commission investigation” there is substituted “ An Article 20 inspection ”;
- (b) paragraph (a) shall cease to have effect;
- (c) in paragraph (b),
 - (i) after the words “suspecting that there are” there is inserted “ on any business premises ”;

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- (ii) the words “on the premises” shall cease to have effect; and
- (iii) for the words “the Commission official” there is substituted “ a Commission official ”.

(6) For subsection (5) there is substituted—

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

(7) After subsection (9) there is inserted—

“(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

“OFT officer” means any officer of the OFT whom the OFT 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.”.

(8) In the sidenote, for the words “Power to enter Premises: Commission investigations” there is substituted “ Power to enter business premises under a warrant: Article 20 inspections ”.

Changes to legislation:

There are currently no known outstanding effects for the The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, Paragraph 37.