STATUTORY INSTRUMENTS

2019 No. 93

The Competition (Amendment etc.) (EU Exit) Regulations 2019

PART 2

Amendment of the Competition Act 1998

2. The Competition Act 1998(**1**) is amended as follows.

3.—(1) Section 10(**2**) is amended as follows.

(2) In the heading, for "Parallel exemptions" substitute "Retained exemptions".

(3) Before subsection (1) insert—

"(A1) An agreement is exempt from the Chapter I prohibition if it falls within a category of agreements specified as exempt in a retained block exemption regulation.".

(4) Omit subsections (1) and (2).

(5) In subsection (3), for "parallel exemption" substitute "retained exemption".

(6) In subsection (4)—

(a) for "parallel exemption" substitute "retained exemption";

(b) omit paragraph (a) (together with the final "and");

(c) in paragraph (b), for "exemption from the Community prohibition" substitute "retained block exemption regulation".

(7) In subsection (5)—

(a) in paragraph (a)—

(i) for "parallel exemption" substitute "retained exemption";

(ii) after "effect" insert "in respect of an agreement";

(b) in paragraph (d), after "exemption" insert "in respect of an agreement".

(8) Omit subsections (9) to (11).

(9) After subsection (11), insert—

"(12) In this Part, "retained block exemption regulation" means the following regulations as amended from time to time—

(a) Council Regulation (EC) 169/2009 applying rules of competition to transport by rail, road and inland waterway;

(b) Commission Regulation (EC) 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia);

(**1**) 1998 c. 41.

(**2**) Section 10 was amended by paragraph 38(1) and (8) of Schedule 25 to the Enterprise Act 2002 (c. 40), paragraphs 1 and 4 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24), S.I. 2004/1261 and S.I. 2012/1809.

(c) Commission Regulation (EU) 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;

(d) Commission Regulation (EU) 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector;

(e) Commission Regulation (EU) 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements;

(f) Commission Regulation (EU) 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements;

(g) Commission Regulation (EU) 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements.”.

4. After section 10 insert—

“**10A Power to vary etc retained block exemption regulations**

(1) The Secretary of State may by regulations vary or revoke a retained block exemption regulation.

(2) In exercising the power under subsection (1), the Secretary of State must have regard to the conditions specified in section 9(1) for exemption from the Chapter 1 prohibition.

(3) If, in the opinion of the CMA, it is appropriate to vary or revoke a retained block exemption regulation, the CMA may make a recommendation to that effect to the Secretary of State.

(4) Before making a recommendation under subsection (3), the CMA must—

(a) publish details of its proposed recommendation in such a way as it 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 it.

(5) Before exercising the power to vary or revoke a retained block exemption regulation (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—

(a) inform the CMA of the proposed variation or revocation; and

(b) take into account any comments made by the CMA.”.

5. Omit section 11(**3**).

6.—(1) Section 25(**4**) is amended as follows.

(2) Omit subsections (3), (5) and (7).

(3) In subsection (8)(a), for “parallel exemption” substitute “retained exemption”.

(4) Omit subsection (9).

(5) In subsection (10), for “parallel exemption” substitute “retained exemption”.

(6) Omit subsection (11).

(**3**) Section 11 was amended by S.I. 2012/1809.

(**4**) Section 25 was substituted by S.I. 2004/1261, and subsequently amended by paragraphs 1, 5(1), (2) and (3) of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2011/1043 and S.I. 2012/1809.

(7) In subsection (12), omit "or (7)".

7. In section 25A(1)(b)(**5**), for "subsections (2) to (7)" substitute "subsections (2), (4) and (6)".

8. In section 31(2)(**6**)—

(a) at the end of paragraph (a), insert "or";

(b) omit paragraphs (c) and (d).

9. In section 32(1)(**7**), omit "or that it infringes the prohibition in Article 101(1)".

10. In section 33(1)(**8**), omit "or that it infringes the prohibition in Article 102".

11. In section 35(**9**)—

(a) in subsection (1), for "subsections (8) and (9)" substitute "subsection (8)";

(b) in subsection (6), for "section 25(2), (3), (6) and (7)" substitute "section 25(2) and (6)";

(c) in subsection (7), for "section 25(4) and (5)" substitute "section 25(4)";

(d) omit subsection (9).

12. In section 36(**10**)—

(a) in subsection (1), omit "or that it has infringed the prohibition in Article 101(1)";

(b) in subsection (2), omit "or that it has infringed the prohibition in Article 102";

(c) in subsection (7A)(b)—

(i) in sub-paragraph (i), omit "or the prohibition in Article 81(1)";

(ii) in sub-paragraph (ii), omit "or the prohibition in Article 82".

13. In section 38(**11**)—

(a) in subsection (1), for the words from "the Chapter 1 prohibition" to the end substitute "the Chapter 1 prohibition or the Chapter 2 prohibition.";

(b) omit subsection (1A);

(c) omit subsections (9) and (10).

14. In section 46(3)(**12**)—

(a) omit paragraphs (b) and (d);

(b) in paragraph (e), for "parallel exemption" substitute "retained exemption";

(c) omit paragraph (f).

15. In section 47(1)(a)(**13**), for "paragraphs (a) to (f)" substitute "paragraph (a), (c) or (e)".

(**5**) Section 25A was inserted by section 42(1) and (2) of the Enterprise and Regulatory Reform Act 2013.

(**6**) Section 31(2) was amended by paragraphs 1 and 10 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809.

(**7**) Section 32(1) was amended by paragraph 38(1) and (24) of Schedule 25 to the Enterprise Act 2002, paragraphs 1 and 16 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261 and S.I. 2012/1809.

(**8**) Section 33(1) was amended by paragraph 38(1) and (25) of Schedule 25 to the Enterprise Act 2002, paragraphs 1 and 17 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261 and S.I. 2012/1809.

(**9**) Section 35 was amended by paragraphs 1 and 19 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261, S.I. 2011/1043 and S.I. 2012/1809.

(**10**) Section 36 was amended by paragraph 38(1) and (28) of Schedule 25 to the Enterprise Act 2002, section 44 of, and paragraphs 1 and 20 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261 and S.I. 2012/1809.

(**11**) Section 38 was amended by section 40 of, and paragraphs 1 and 22 of Schedule 5 and paragraphs 8 and 10 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraph 65 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2004/1261. There are other amendments to section 38 but none is relevant to these Regulations.

(**12**) Section 46(3) was substituted by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 26 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.

(**13**) Section 47(1) was first substituted by section 17 of the Enterprise Act 2002 (c.40), further substituted by S.I. 2004/1261, and subsequently amended by paragraphs 1 and 27 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

16.—(1) Section 47A(**14**) is amended as follows.

(2) In subsection (2)—

(a) at the end of paragraph (a), insert "or";

(b) omit paragraphs (c) and (d).

(3) For subsection (6) substitute—

"(6) In this Part (except in section 49C) "infringement decision" means—

(a) a decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed, or

(b) a decision of the Tribunal on an appeal from the decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed.".

17. In section 49C(11)(**15**), for the definition of "infringement decision" (but not the final "and") substitute—

""infringement decision" means a decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed,".

18. In section 52, omit subsection (1A)(**16**).

19.—(1) Section 58(2)(**17**) is amended as follows.

(2) In the definition of "Part I proceedings"—

(a) at the end of paragraph (za), insert "or";

(b) omit paragraph (b) and the "or" before it.

(3) In the definition of "relevant party"—

(a) in paragraph (a), omit "or the prohibition in Article 101(1)";

(b) in paragraph (b), omit "or the prohibition in Article 102".

20. In section 58A(**18**), omit subsection (4).

21.—(1) Section 59(1)(**19**) is amended as follows.

(2) Omit the definitions of—

(a) "Article 101(1)";

(b) "Article 101(3)";

(c) "Article 102";

(d) "the Commission";

(e) "the Council";

(f) "the EEA Agreement";

(**14**) Section 47A was initially inserted by section 18(1) of the Enterprise Act 2002, and subsequently substituted by paragraphs 1 and 4 of Schedule 8 to the Consumer Rights Act 2015 (c.15).

(**15**) Section 49C was inserted by paragraphs 1 and 12 of Schedule 8 to the Consumer Rights Act 2015.

(**16**) Subsection (1A) was initially inserted into section 52 by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 32 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.

(**17**) Section 58(2) was amended by paragraphs 1 and 36 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 1 and 13 of Schedule 8 to the Consumer Rights Act 2015, S.I. 2004/1261 and S.I. 2012/1809.

(**18**) Section 58A was inserted by section 20(1) of the Enterprise Act 2002 and subsequently substituted by paragraphs 1 and 14 of Schedule 8 to the Consumer Rights Act 2015 and further amended by S.I. 2017/385.

(**19**) Section 59(1) was amended by section 20(3) of the Enterprise Act 2002, paragraphs 218 and 221 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 1 and 15 of Schedule 8 to the Consumer Rights Act 2015, S.I. 2004/1261, S.I. 2011/1043, S.I. 2012/1809 and S.I. 2017/385; there are other amendments to section 59 but none is relevant to these Regulations.

(g) "the European Court";

(h) "the EC Competition Regulation";

(i) "parallel exemption";

(j) "section 11 exemption" (including the final "and");

(k) "the Treaty".

(3) In the definition of "the court", for "60" substitute "60A".

(4) At the appropriate places, insert—

""retained block exemption regulation" has the meaning given in section 10(12);";

""retained exemption" has the meaning given in section 10(3);".

22. Omit section 60(**20**)).

23. After section 60 insert—

"**60A Certain principles etc to be considered or applied from exit day**

(1) This section applies when one of the following persons determines a question arising under this Part in relation to competition within the United Kingdom—

(a) a court or tribunal;

(b) the CMA;

(c) a person acting on behalf of the CMA in connection with a matter arising under this Part.

(2) The person must act (so far as is compatible with the provisions of this Part) with a view to securing that there is no inconsistency between—

(a) the principles that it applies, and the decision that it reaches, in determining the question, and

(b) the principles laid down by the Treaty on the Functioning of the European Union and the European Court before exit day, and any relevant decision made by that Court before exit day, so far as applicable immediately before exit day in determining any corresponding question arising in EU law,

subject to subsections (4) to (7).

(3) The person must, in addition, have regard to any relevant decision or statement of the European Commission made before exit day and not withdrawn.

(4) Subsection (2) does not require the person to secure that there is no inconsistency with a principle or decision referred to in subsection (2)(b) so far as the principle or decision is excluded from the law of England and Wales, Scotland and Northern Ireland on or after exit day.

(5) For the purposes of subsection (4), a principle or decision is to be treated as not excluded from the law of England and Wales, Scotland and Northern Ireland if it is excluded only by virtue of an exclusion or revocation in the Competition (Amendment etc.) (EU Exit) Regulations 2019.

(6) Subsection (2) does not apply so far as the person is bound by a principle laid down by, or a decision of, a court or tribunal in England and Wales, Scotland or Northern Ireland that requires the person to act otherwise.

(**20**) Section 60 was amended by paragraphs 1 and 39 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2011/1043.

(7) Subsection (2) does not apply if the person thinks that it is appropriate to act otherwise in the light of one or more of the following—

(a) differences between the provisions of this Part under consideration and the corresponding provisions of EU law as those provisions of EU law had effect immediately before exit day;

(b) differences between markets in the United Kingdom and markets in the European Union;

(c) developments in forms of economic activity since the time when the principle or decision referred to in subsection (2)(b) was laid down or made;

(d) generally accepted principles of competition analysis or the generally accepted application of such principles;

(e) a principle laid down, or decision made, by the European Court on or after exit day;

(f) the particular circumstances under consideration.

(8) In subsection (2)(b), the reference to principles laid down before exit day is a reference to such principles as they have effect in EU law immediately before exit day, disregarding the effect of principles laid down, and decisions made, by the European Court on or after exit day.

(9) In this section, references to a decision of the European Court or the European Commission include a decision as to—

(a) the interpretation of a provision of EU law;

(b) the civil liability of an undertaking for harm caused by its infringement of EU law.".

24. Omit Parts 2 and 2A(**21**).

25. In section 72(1)(**22**), omit ", 65 or 65L to 65N".

26.—(1) Section 73(**23**) is amended as follows.

(2) In subsection (4)—

(a) omit "or 65D";

(b) in paragraph (a), omit "or (as the case may be) section 65F";

(c) in paragraph (b), for "none of sections 28, 28A, 65G and 65H applies" substitute "sections 28 and 28A do not apply".

(3) Omit subsection (6).

(4) In subsection (6A), for "subsections (4) and (6)" substitute "subsection (4)";

(5) In subsection (8)—

(a) in paragraph (a), omit "or 65F";

(b) in paragraph (b), for "section 28, 28A, 62, 62A, 63, 65G or 65H" substitute "section 28 or 28A".

27. Omit section 75A(**24**).

(**21**) Part 2 was substituted, and Part 2A was inserted, by S.I. 2004/1261. There are amendments to those Parts, but none is relevant to these Regulations.
(**22**) Section 72(1) was amended by S.I. 2004/1261.
(**23**) Section 73 was amended by S.I. 2004/1261.
(**24**) Section 75A was inserted by S.I. 2004/1261; there are amendments to section 75A, but none is relevant to these Regulations.

28. In Schedule 1, omit Part 2(**25**).

29.—(1) Schedule 3 is amended as follows.

(2) Omit paragraph 3(**26**) (and the italic heading before it).

(3) In paragraph 5, in sub-paragraph (3), omit paragraphs (b) and (c).

30.—(1) Schedule 8A(**27**) is amended as follows.

(2) In paragraph 2(1)—

(a) at the end of paragraph (a), insert "and";

(b) omit paragraphs (c) and (d).

(3) In paragraph 3—

(a) in sub-paragraph (1)—

(i) at the end of paragraph (a), insert "and";

(ii) omit paragraphs (c) and (d);

(b) omit sub-paragraph (2);

(c) in sub-paragraph (4)—

(i) for "Subsections (3) and (4) of section 58A apply" substitute "Section 58A(3) applies";

(ii) for "the CMA, a regulator or the Commission" substitute "the CMA or a regulator";

(d) omit sub-paragraphs (5) and (6).

(4) In paragraph 12—

(a) in sub-paragraph (5), at the end insert "("the SME Annex"), subject to sub-paragraph (6)";

(b) after sub-paragraph (5), insert—

"(6) For the purposes of this paragraph, the SME Annex has effect as if—

(a) in Article 2(1), for "EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million" there were substituted "£44,000,000 and/or an annual balance sheet total not exceeding £38,000,000";

(b) in Article 2(2), for "EUR 10 million" there were substituted "£8,800,000";

(c) in Article 2(3), for "EUR 2 million" there were substituted "£1,750,000";

(d) in Article 3(2)(a), for "EUR 1 250 000" there were substituted "£1,100,000";

(e) in Article 3(2)(d), for "EUR 10 million" there were substituted "£8,800,000";

(f) in Article 3(5), for "by national or Community rules" there were substituted "under the law of the United Kingdom (or any part of it)";

(g) in Article 5(b), for "national law" there were substituted "the law of the United Kingdom (or any part of it)".".

(5) In paragraph 14(1)(a), omit "or the prohibition in Article 101(1)".

(6) Omit paragraph 35 (and the italic heading before it).

31.—(1) Schedule 9 is amended as follows.

(**25**) There is an amendment to Part 2 but it is not relevant to these Regulations.
(**26**) Paragraph 3 was amended by S.I. 2007/126 and S.I. 2017/701.
(**27**) Schedule 8A was inserted by S.I. 2017/385.

(2) In paragraph 5(1)(d)(**28**)—

(a) at the end of sub-paragraph (i), insert "or";

(b) omit sub-paragraph (ii);

(c) omit sub-paragraph (iv) and the "or" before it.

(3) In paragraph 5(2)(**29**)—

(a) at the end of paragraph (a), insert "or";

(b) omit paragraph (b);

(c) omit paragraph (d) and the "or" before it.

(4) In paragraph 8(**30**), omit sub-paragraph (b);

(5) For the italic heading before paragraph 9 substitute "*Retained exemptions*".

(6) In paragraph 9(a)(i), for "parallel exemption" substitute "retained exemption".

(7) Omit paragraph 10 and the italic heading before it.

(**28**) Paragraph 5(1)(d) was substituted by S.I. 2004/1261 and subsequently amended by paragraph 58(1) and (4) of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.

(**29**) Paragraph 5(2) was substituted by S.I. 2004/1261 and subsequently amended by paragraph 58(1) and (4) of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.

(**30**) Paragraph 8 was substituted by S.I. 2004/1261.