

Damages Directive – Transposition Table

Article	Transposition Measure
Article 1	
Art 1(1) and (2) (subject matter and scope)	No separate transposition.
Article 2	
Article 2(1) ('infringement of competition law')	Schedule 8A, Para 2(1) – this defines competition law. Schedule 8A, Para 2(5) – this defines infringement.
Article 2(2) ('infringer')	No separate transposition. Section 59 of the Competition Act 1998 ("CA98"), defines "person" as including undertaking. Schedule 8A, paragraph 7(4) provides that 'undertaking' includes an association of undertakings
Article 2(3) ("national competition law")	Schedule 8A, Para 2(1)
Article 2(4) ('action for damages')	Schedule 8A, para 2(3).
Article 2(5) ('claim for damages')	Schedule 8A, para 2(2).
Article 2(6) ('injured party')	No separate transposition. Section 47A CA98 enables claims to be brought by injured parties.
Article 2(7) ('national competition authority')	Schedule 8A, para 3(2)
Article 2(8) ('competition authority')	Schedule 8A, para 3(1)
Article 2(9) ('national court')	Schedule 2, para 8, which extends s.59(1) CA98 (which defines "court") to extend to Schedule 8A.
Article 2(10) ('review court')	Schedule 8A, para 35(2).

Article 2(11) ('infringement decision')	No separate transposition. Section 59(1) CA98 defines infringement decision.
Article 2(12) ('final infringement decision')	Section 58A CA98 defines final infringement decision (other than where it is a decision of another Member State). Schedule 2, paragraph 8 updates this definition to provide broader drafting to cover all scenarios for when an appeal has ended.
Article 2(13) ('evidence')	Schedule 8A, para 3(5) defines final infringement decision where it is the decision of another Member State.
Article 2(14) ('cartel')	No separate transposition.
	Schedule 8A, para 4(1) and (2).
Article 2(15) ('leniency programme')	Schedule 8A, para 4(3).
Article 2(16) ('leniency statement')	Schedule 8A, para 4(4).
Article 2(17) ('pre-existing information')	Schedule 8A, para 4(5).
Article 2(18) ('settlement submission')	Schedule 8A, para 5(1) and (2).
Article 2(19) ('immunity recipient')	Schedule 8A, para 14.
Article 2(20) ('overcharge')	Schedule 8A, para 8.
Article 2(21) ('consensual dispute resolution')	Schedule 8A, para 6(1).
Article 2(22) ('consensual settlement')	Schedule 8A, para 37.
Article 2(23) ('direct purchaser')	No separate transposition – however, indirect purchaser is defined in Schedule 8A, para 9(1) – but by implication a direct purchaser is someone who is not an indirect purchaser.

Article 2(24) ('indirect purchaser')	See provisions relating to 'injured person' in Schedule 8A, paragraph 9 (and 10 for indirect providers).
Article 3	
Article 3(1) (right to full compensation)	No separate transposition – full compensation already available under national law.
Article 3(2) (meaning of full compensation)	No separate transposition – full compensation already available under national law.
Article 3(3) (over compensation prohibition)	Schedule 8A, para 36.
Article 4	
Article 4 (effectiveness and equivalence)	No specific transposition – but as Schedule 8A applies to both purely domestic (Chapter I and II) and European (Article 101 and 102) claims, there is no less favourable treatment to claims which are the subject of the directive.
Article 5	
Article 5(1) (disclosure)	<p>Schedule 8A, paragraph 31 gives power to the NI High Court to order disclosure against third parties.</p> <p>Otherwise, no separate transposition strictly required. National courts, including the CAT already have well established disclosure provisions</p> <p>CPR amendments transpose 'reasoned justification'.</p> <p>Nothing in the transposition or otherwise affects the operation of Regulation (EC) No 1206/2001.</p>
Article 5(2) (disclosure)	No separate transposition strictly required. National courts, including the CAT already have well established disclosure provisions. Some CPR amendments.
Article 5(3) (disclosure)	Some CPR amendments.
Article 5(4) (disclosure)	No separate transposition in court/CAT rules because protection of confidential information already available

Article 5(5) (disclosure)	No separate transposition. National courts, including the CAT already have well established disclosure provisions.
Article 5(6) (disclosure – legal professional privilege)	No separate transposition in court/CAT rules because already available.
Article 5(7) (disclosure – right to be heard)	No separate transposition in court/CAT rules because already available.
Article 5(8) (not maximum harmonization)	We are not seeking to reduce the scope for disclosure in the national courts (including CAT).
Article 6	
Article 6(1) (disclosure)	Some CPR amendments.
Article 6(2) (Regulation 1049/2001)	No separate transposition. Nothing in the Regulations affects the operation of Regulation (EC) No 1049/2001.
Article 6(3) (protection of internal documents)	No separate transposition. Nothing in the Regulations undermines protection of internal documents of competition authorities and correspondence between competition authorities.
Article 6(4) (disclosure – proportionality)	Transposition in court (including CAT) rules.
Article 6(5) – (Restriction in relation to investigation materials)	Schedule 8A, paragraph 29.
Article 6(6) – (Restriction in relation to cartel leniency statements and settlement submissions)	Schedule 8A, paragraph 28.

Article 6(7) (determining whether material is leniency statement or settlement submission)	Schedule 8A, paragraph 4(7) and (8), paragraph 5(3) and (4), and paragraph 27(2).
Article 6(8) (materials which are not leniency statement or settlement submission)	No separate transposition. Schedule 8A, para 28 does not restrict disclosure of documents which are not leniency statements or settlement submissions.
Article 6(9) (evidence in competition authority file)	No separate transposition – although Schedule 8A, para 30 provides for disclosure from material in a competition authority's file.
Article 6(10) – (Restriction in relation to material in a competition authority's file)	Schedule 8A, paragraph 30. CPRs also contain as procedural rule.
Article 6(11) (competition authority's view)	Transposition in court (including CAT) rules.
Article 7	
Article 7(1) (restriction on admissibility of cartel leniency statements and settlement submissions)	Schedule 8A, paragraph 32. CPR rules signpost this, and the following two, provisions.
Article 7(2) (restriction on admissibility of investigation materials)	Schedule 8A, paragraph 33.
Article 7(3) (restriction on material from a competition authority's file)	Schedule 8A, paragraph 34.

Article 8	
Article 8(1) (penalties)	No separate transposition. Courts (including CAT) already have sanctions available where there is non-compliance with court order.
Article 8(2) (penalties)	No separate transposition. Courts (including CAT) already have sanctions available where there is non-compliance with court order).
Article 9	
Article 9(1) (A final infringement decision of national competition authority or a review court is deemed to be irrefutable evidence that a breach of competition law has occurred.)	Schedule 8A, paragraph 3(4) refers to section 58A Competition Act 1998, which already provides.
Article 9(2) (final infringement decision of a competition authority of another Member State is deemed to prima facie evidence)	Schedule 8A, paragraph 3(5) and 35.
Article 9(3) (Article 267)	No separate transposition. Nothing in the Regulations affects operation of Article 267.
Article 10	
Article 10(1) (rules for limitation)	Schedule 8A, Part 5.

Article 10(2) (knowledge requirement)	Schedule 8A, paragraph 19.
Article 10(3) (limitation at least 5 years)	Schedule 8A, paragraph 18.
Article 10(4) (limitation periods are to be suspended for at least one year if a competition authority takes action)	Schedule 8A, paragraph 21.
Article 11	
Article 11(1) (joint and several liability)	No separate transposition. Principle of joint and several liability well established.
Article 11(2) (liability of SMEs)	Schedule 8A, paragraphs 12(1) and (3)
Article 11(3) (exception to limitation to SME liability)	Schedule 8A, paragraph 12(2).
Article 11(4) (immunity recipient liability)	Schedule 8A, paragraph 14 and 15
Article 11(5) (contribution, including for immunity recipients)	First sentence – Schedule 8A, paragraph 38(2). Schedule 8A, paragraph 16.
Article 11(6) (relative responsibility)	Schedule 8A, paragraph 38(2).
Article 12	Passing-on of overcharges and the right to full compensation
Article 12 (passing on of overcharges and the right to full compensation)	Already recognised in well-entrenched tortious principles and UK case law.

Article 13	Passing-on defence
Article 13 (passing-on defence)	For burden of proof in second sentence, Schedule 8A, paragraph 11. Otherwise, already recognised in well-entrenched tortious principles and UK case law.
Article 14	Indirect purchasers
Article 14(1) (indirect purchasers)	Already recognised in well-entrenched tortious principles.
Article 14(2)	Schedule 8A, paragraphs 9 and 10.
Article 15	Actions for damages by claimants from different levels in the supply chain
Article 15(1) (courts being able to take into account relevant information)	No separate transposition. There is nothing to stop courts taking into account the information.
Article 15(2) (Regulation No 1215/2012)	No separate transposition. Nothing in the Regulations affects Article 30 of Regulation (EU) No 1215/2012.
Article 16	Guidelines for national courts
Guidelines for national court.	No separate transposition – The Article places an obligation on the Commission to issue guidelines for national courts on how to estimate the share of the overcharge which was passed on to the indirect purchaser.
Article 17	Quantification of Harm
Article 17(1) (estimate harm)	Already practice in courts/the Tribunal.
Article 17(2) (presumption cartels cause harm)	Schedule 8A, paragraph 13.
Article 17(3)	Courts (including CAT) already have power to seek such assistance.

Article 18	Suspensive and other effects of consensual dispute resolution
Article 18(1) (limitation period suspended for consensual dispute resolution)	Paragraph 8A, paragraph 22.
Article 18(2) (courts being able to suspend proceedings for up to two years)	Courts (including CAT) already have powers to suspend proceedings and manage cases.
Article 18(3)	Currently in discussions with CMA to transpose administratively, rather than legislatively.
Article 19	Effect of consensual settlements on subsequent actions for damages
Article 19(1) (settling injured party claim)	Schedule 8A, paragraph 39.
Article 19(2) (settling injured party claim)	Schedule 8A, paragraph 40(1) and 41.
Article 19(3) (settling infringer liability)	Schedule 8A, paragraph 40(3).
Article 19(4) (contribution for co-infringer)	Schedule 8A, paragraph 38(3).
Article 20	Review
Article 20 (Review)	No transposition – obliges the Commission to review the Directive and submit a report to the European Parliament and the Council.
Article 21	Transposition
Article 21 (transposition)	Regulation 1(2) (commencement).

Article 22	Temporal application
Article 22(1) (substantive provisions not applied retroactively)	Schedule 8A, paragraph 42
Article 22(2) (non-substantive provisions not to apply to proceedings before 26 December 2014)	Schedule 8A, paragraph 43.
Article 23	Entry into force
This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	No transposition - no obligation on Member States.
Article 24	Addresses
The Directive binds Member States	No separate transposition.