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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The State Aid (EU Exit) Regulations 2019**

**PART 4**

**Enforcement**

**Interim suspension order**

**37.**—(1) If the CMA opens an investigation under regulation 15(5)(c) (unlawful aid) or 19(6) (misuse of aid), the CMA may make an interim suspension order requiring the aid grantor to suspend the aid.

(2) An interim suspension order may require aid to be suspended until the CMA decides whether to approve the aid.

(3) The CMA must give the aid grantor an opportunity to send comments before making an interim suspension order.

**Interim recovery order**

**38.**—(1) The CMA may make an interim recovery order requiring the aid grantor to take all necessary measures to provisionally recover alleged unlawful aid and interest payable on the aid if—

- (a) the CMA opens an investigation under regulation 15(5)(c) (unlawful aid);
- (b) the CMA considers that—
  - (i) according to established practice, the measure concerned constitutes aid;
  - (ii) there is an urgency to act; and
  - (iii) there is a serious risk of substantial and irreparable damage to a competitor of the aid beneficiary; and
- (c) the limitation period for the aid has not expired.

(2) After the aid grantor recovers the aid and interest, regulation 13 applies as if references to regulation 11 were references to regulation 17.

(3) The CMA must give the aid grantor an opportunity to send comments before making an interim recovery order.

**Termination order**

**39.** If the CMA takes any of the following decisions, the CMA must make a termination order requiring the aid grantor to terminate, modify or otherwise bring to an end the aid—

- (a) a decision under regulation 17 (unlawful aid) or 21 (misuse of aid) not to approve aid; or
- (b) a decision under regulation 27 (existing aid scheme) that an existing aid scheme could not be approved.

**Recovery order**

**40.**—(1) If the CMA takes a decision under regulation 17 (unlawful aid) or 21 (misuse of aid) not to approve aid, the CMA must make a recovery order requiring the aid grantor to take all necessary measures to recover the aid and interest payable on the aid from the beneficiary.

- (2) However, the CMA must not make a recovery order if—
- (a) making the order would be contrary to the protection of a legitimate expectation created by the CMA; or
  - (b) the limitation period for the aid has expired.
- (3) A recovery order may, but is not required to, specify the amount of aid to be recovered.

**Limitation period**

**41.**—(1) The limitation period for aid is a period of ten years starting with the day on which the aid was granted to the beneficiary.

(2) If the CMA has opened an investigation under regulation 8(1)(c), 15(5)(c) or 19(6) in respect of the aid, the period in paragraph (1) is suspended until the investigation is completed or otherwise ended.

(3) If a decision of the CMA in relation to the aid is the subject to judicial review proceedings (including any appeals), the period in paragraph (1) is suspended for the duration of the proceedings.

(4) If the period in paragraph (1) includes any period before exit day, Article 17(2) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (as it had effect immediately before exit day), so far as it makes provision for interruptions and suspensions of limitation periods, applies to that pre-exit day period.

(5) If the limitation period for unlawful aid or misused aid expires, the aid is deemed to be existing aid.

**Information provisions in enforcement order**

**42.** The CMA may, in an enforcement order, require an aid grantor to send information to the CMA setting out how the aid grantor plans to comply with the order.

**Time to comply with enforcement order**

**43.**—(1) The CMA must—

- (a) send any relevant enforcement order to the aid grantor concerned; and
  - (b) specify a compliance date in the order.
- (2) The CMA may specify different compliance dates for different parts of the order.
- (3) The CMA may extend a compliance date if—
- (a) the aid grantor sends a request for an extension before the compliance date;
  - (b) serious difficulties prevent the aid grantor from complying with the order by the compliance date; and
  - (c) the CMA considers the serious difficulties provide an appropriate justification for the extension.
- (4) If a compliance date is extended, the new date is to be treated as the compliance date.

### **Recovery of aid**

- 44.**—(1) If the CMA makes a recovery order or an interim recovery order—
- (a) the aid grantor must notify the beneficiary of the order;
  - (b) the aid grantor must take all necessary measures to recover the aid and interest payable on the aid from the beneficiary; and
  - (c) the aid grantor has a right to recover the aid and interest payable on the aid from the beneficiary.
- (2) Interest payable on the aid is calculated in accordance with regulations 58 and 59.
- (3) In any proceedings that rely on the right in paragraph (1)(c), it is a defence for the beneficiary to show that—
- (a) recovery of the aid would be contrary to the protection of a legitimate expectation created by the CMA; or
  - (b) the limitation period for the aid had expired at the time the recovery order was made by the CMA.

### **Compliance with enforcement order**

- 45.**—(1) An aid grantor must comply with an enforcement order that is sent to the aid grantor.
- (2) If an aid grantor does not comply with an enforcement order by the compliance date, the CMA must certify in writing to the court that the aid grantor has failed to comply with the order.
- (3) However, the CMA must not certify that an aid grantor has failed to comply with an order if the CMA considers that it is impossible for the aid grantor to comply with the order.
- (4) If a failure to comply is certified under paragraph (2), the court may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the aid grantor, and after hearing any statement that may be offered in defence, deal with the aid grantor as if it had committed a contempt of court.