



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

##### Modifications etc. (not altering text)

- C1** Pt. 1: certain functions made exercisable concurrently (26.11.1998 for certain purposes and *prosp.* otherwise) by 1984 c. 12, s. 50(3) (as substituted by 1998 c. 41, s. 66(5), Sch. 10 Pt. II para. 2(6) (with s. 73); S.I. 1998/2750, art. 2)
- C2** Pt. 1 (except ss. 38(1)-(6), 51) amended (1.2.2001) by 2000 c. 38, ss. 86(1)(3), 89 (with ss. 105(2)(d) (5), 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. 1
- C3** Pt. 1 (except ss. 38(1)-(6), 51, 52(6) and (8) and 54) amended (1.2.2001) by 2000 c. 38, s. 86(4)(b)(5) (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. 1  
Pt. 1 (except ss. 38(1)-(6), 51) amended (1.2.2001) by 2000 c. 38, s. 86(7)(b) (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. 1
- C4** Pt. 1 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), ss. 371(3), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- C5** Pt. 1 certain functions made exercisable concurrently by 1998 c. 41, s. 67(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 2 para. 6(2)(a))
- C6** Pt. 1 certain functions made exercisable concurrently by 1991 c. 56, s. 31(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 2 para. 4(2)(a))
- C7** Pt. 1 certain functions made exercisable concurrently by S.I. 1992/231 (N.I. 1) art. 46(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 2 para. 5(2)(a))
- C8** Pt. 1 certain functions made exercisable concurrently by 1986 c. 44, s. 36A(3) (as substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 2 para. 1(2)(a))
- C9** Pt. 1 restricted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), regs. 1(a), 9(2)

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- C10** Pt. 1 certain functions made exercisable concurrently by 1989 c. 29, s. 43(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 3(2)(a)**)
- C11** Pt. 1 certain functions made exercisable concurrently by S.I. 1996/275 (N.I. 2), art. 23(3) (as substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 9(2)(a)**)
- C12** Pt. 1 certain functions made exercisable concurrently (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336\)](#), arts. 1(2), **29(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, art. 2(2), Sch. Pt. 2 (with Sch. 2)
- C13** Pt. 1 modified (1.4.2007) by [The Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336\)](#), arts. 1(2), **29(5)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, art. 2(2), Sch. Pt. 2 (with Sch. 2)

## CHAPTER I

### AGREEMENTS

#### *Introduction*

#### **1 Enactments replaced.**

The following shall cease to have effect—

- (a) the Restrictive Practices Court Act 1976 (c. 33),
- (b) the Restrictive Trade Practices Act 1976 (c. 34),
- (c) the Resale Prices Act 1976 (c. 53), and
- (d) the Restrictive Trade Practices Act 1977 (c. 19).

#### **Commencement Information**

- II** S. 1 partly in force; s. 1 was not in force at Royal Assent, see. s. 76(2)(3); s. 1(b) to (d) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, **Sch.**

#### *The prohibition*

#### **2 Agreements etc. preventing, restricting or distorting competition.**

- (1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—
- (a) may affect trade within the United Kingdom, and
  - (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom,
- are prohibited unless they are exempt in accordance with the provisions of this Part.
- (2) Subsection (1) applies, in particular, to agreements, decisions or practices which—
- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development or investment;
  - (c) share markets or sources of supply;

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- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.
- (4) Any agreement or decision which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).
- (6) Subsection (5) does not apply where the context otherwise requires.
- (7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.
- (8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

**Modifications etc. (not altering text)**

- C14** S. 2(1) excluded (18.6.2001) by 2000 c. 8, ss. 164(1)(2)(4); S.I. 2001/1820, art. 2, Sch.  
S. 2(1) excluded (3.9.2001) by 2000 c. 8, s. 311(9); S.I. 2001/2632, art. 2(2), Sch. Pt. 2
- C15** S. 2(5) applied (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), regs. 1(a), 7(3)

*Excluded agreements*

**3 Excluded agreements.**

- (1) The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of—
- (a) Schedule 1 (mergers and concentrations);
  - (b) Schedule 2 (competition scrutiny under other enactments);
  - (c) Schedule 3 (planning obligations and other general exclusions). <sup>F1</sup>...
  - <sup>F2</sup>(d) .....
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter I prohibition, by—
- (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend Schedule 3, with respect to the Chapter I prohibition, by—
- (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision—
    - (i) added by an order under this subsection; or

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- (ii) included in paragraph 1, 2, 8 or 9 of Schedule 3.
- (4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Secretary of State that agreements which fall within the additional exclusion—
- (a) do not in general have an adverse effect on competition, or
  - (b) are, in general, best considered under Chapter II or [<sup>F3</sup>the <sup>M1</sup>Fair Trading Act 1973][<sup>F3</sup>the Enterprise Act 2002].
- (5) An order under subsection (2)(a) or (3)(a) may include provision (similar to that made with respect to any other exclusion provided by the relevant Schedule) for the exclusion concerned to cease to apply to a particular agreement.
- (6) Schedule 3 also gives the Secretary of State power to exclude agreements from the Chapter I prohibition in certain circumstances.

#### Textual Amendments

- F1** Word in s. 3(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F2** S. 3(1)(d) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 207, 279, [Sch. 26](#) (with [Sch. 24](#) paras. 20, 22); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F3** Words in s. 3(4)(b) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(2\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 3(1)); [S.I. 2004/3233](#), art. 2, [Sch.](#) (with arts. 3-5)

#### Commencement Information

- I2** S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 76(3); s. 3(1)(b) in force for certain purposes at 11.1.1999 and s. 3(1)(a)(c)(d)(2)-(6) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); s. 3(1)(b) fully in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### Marginal Citations

- M1** 1973 c. 41.

### *Exemptions*

#### 4 Individual exemptions.

- [<sup>F4</sup>(1) The [<sup>F5</sup>OFT] may grant an exemption from the Chapter I prohibition with respect to a particular agreement if—
- (a) a request for an exemption has been made to [<sup>F5</sup>it] under section 14 by a party to the agreement; and
  - (b) the agreement is one to which section 9 applies.
- (2) An exemption granted under this section is referred to in this Part as an individual exemption.
- (3) The exemption—
- (a) may be granted subject to such conditions or obligations as the [<sup>F5</sup>OFT] considers it appropriate to impose; and
  - (b) has effect for such period as the [<sup>F5</sup>OFT] considers appropriate.

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- (4) That period must be specified in the grant of the exemption.
- (5) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.
- (6) On an application made in such way as may be specified by rules under section 51, the [F5OFT] may extend the period for which an exemption has effect; but, if the rules so provide, [F5:it] may do so only in specified circumstances.]

#### Textual Amendments

- F4** S. 4 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 2** (with reg. 6(2))
- F5** Words in s. 4 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(3)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 5 Cancellation etc. of individual exemptions.

- [F6(1) If the [F7OFT] has reasonable grounds for believing that there has been a material change of circumstance since [F7:it] granted an individual exemption, [F7:it] may by notice in writing—
- (a) cancel the exemption;
  - (b) vary or remove any condition or obligation; or
  - (c) impose one or more additional conditions or obligations.
- (2) If the [F7OFT] has a reasonable suspicion that the information on which [F7:it] based [F7:its] decision to grant an individual exemption was incomplete, false or misleading in a material particular, [F7:it] may by notice in writing take any of the steps mentioned in subsection (1).
- (3) Breach of a condition has the effect of cancelling the exemption.
- (4) Failure to comply with an obligation allows the [F7OFT], by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the [F7OFT] under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.
- (6) If an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.
- (7) The [F7OFT] may act under subsection (1), (2) or (4) on [F7:its] own initiative or on a complaint made by any person.]

#### Textual Amendments

- F6** S. 5 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 3** (with reg. 6(2)(3))
- F7** Words in s. 5 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(4)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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## 6 Block exemptions.

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the [F8OFT], likely to be [F9exempt agreements], the [F8OFT] may recommend that the Secretary of State make an order specifying that category for the purposes of this section.
- (2) The Secretary of State may make an order (“a block exemption order”) giving effect to such a recommendation—
  - (a) in the form in which the recommendation is made; or
  - (b) subject to such modifications as he considers appropriate.
- (3) An agreement which falls within a category specified in a block exemption order is exempt from the Chapter I prohibition.
- (4) An exemption under this section is referred to in this Part as a block exemption.
- (5) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.
- (6) A block exemption order may provide—
  - (a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement;
  - (b) that if there is a failure to comply with an obligation imposed by the order, the [F8OFT] may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the [F8OFT] considers that a particular agreement is not [F10an exempt agreement], [F11it] may cancel the block exemption in respect of that agreement.
- (7) A block exemption order may provide that the order is to cease to have effect at the end of a specified period.
- [F12(8) In this section—
 

“exempt agreement” means an agreement which is exempt from the Chapter I prohibition as a result of section 9; and

“specified” means specified in a block exemption order.]

### Textual Amendments

- F8** Word in s. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(5\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F9** Words in s. 6(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 4\(2\)](#)
- F10** Words in s. 6(6)(c) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 4\(3\)](#)
- F11** Word in s. 6(6)(c) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(5\)\(b\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F12** S. 6(8) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 4\(4\)](#)

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## 7 Block exemptions: opposition.

- [<sup>F13</sup>(1) A block exemption order may provide that a party to an agreement which—
- (a) does not qualify for the block exemption created by the order, but
  - (b) satisfies specified criteria,
- may notify the [<sup>F14</sup>OFT] of the agreement for the purposes of subsection (2).
- (2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) is to be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the [<sup>F14</sup>OFT]—
- (a) is opposed to its being so treated; and
  - (b) gives notice in writing to the party concerned of [<sup>F14</sup>its] opposition before the end of that period.
- (3) If the [<sup>F14</sup>OFT] gives notice of [<sup>F14</sup>its] opposition under subsection (2), the notification under subsection (1) is to be treated as both notification under section 14 and as a request for an individual exemption made under subsection (3) of that section.
- (4) In this section “notice period” means such period as may be specified with a view to giving the [<sup>F14</sup>OFT] sufficient time to consider whether to oppose under subsection (2).]

### Textual Amendments

- F13** S. 7 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 5** (with reg. 6(2))
- F14** Words in s. 7 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(6)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

## 8 Block exemptions: procedure.

- (1) Before making a recommendation under section 6(1), the [<sup>F15</sup>OFT] must—
- (a) publish details of [<sup>F16</sup>its] proposed recommendation in such a way as [<sup>F16</sup>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 [<sup>F16</sup>it].
- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the [<sup>F15</sup>OFT] of the proposed modifications and take into account any comments made by the [<sup>F15</sup>OFT].
- (3) If, in the opinion of the [<sup>F15</sup>OFT], it is appropriate to vary or revoke a block exemption order [<sup>F17</sup>it] may make a recommendation to that effect to the Secretary of State.
- (4) Subsection (1) also applies to any proposed recommendation under subsection (3).
- (5) Before exercising [<sup>F16</sup>its] power to vary or revoke a block exemption order (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—
- (a) inform the [<sup>F15</sup>OFT] of the proposed variation or revocation; and
  - (b) take into account any comments made by the [<sup>F15</sup>OFT].

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- (6) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

#### Textual Amendments

- F15** Words in s. 8 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(7)(a)**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F16** Word in s. 8(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(7)(b)**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F17** Word in s. 8(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(7)(c)**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

## 9 <sup>[F18]</sup>Exempt agreements].

<sup>[F19]</sup>(1) <sup>[F20]</sup>An agreement is exempt from the Chapter I prohibition if it]—

- (a) contributes to—
- (i) improving production or distribution, or
  - (ii) promoting technical or economic progress,
- while allowing consumers a fair share of the resulting benefit; <sup>[F21]</sup>and]
- (b) does not—
- (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or
  - (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

<sup>[F22]</sup>(2) In any proceedings in which it is alleged that the Chapter I prohibition is being or has been infringed by an agreement, any undertaking or association of undertakings claiming the benefit of subsection (1) shall bear the burden of proving that the conditions of that subsection are satisfied.]

#### Textual Amendments

- F18** Words in s. 9 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 6(5)**
- F19** S. 9(1): s. 9 renumbered as s. 9(1) (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 6(1)**
- F20** Words in s. 9(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 6(2)**
- F21** Word in s. 9(1)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 6(3)**
- F22** S. 9(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 6(4)**

## 10 Parallel exemptions.

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from the Community prohibition—
- (a) by virtue of a Regulation, <sup>[F23]</sup>or



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- (b) because of a decision of the Commission under Article 10 of the EC Competition Regulation.]
- (2) An agreement is exempt from the Chapter I prohibition if it does not affect trade between Member States but otherwise falls within a category of agreement which is exempt from the Community prohibition by virtue of a Regulation.
- (3) An exemption from the Chapter I prohibition under this section is referred to in this Part as a parallel exemption.
- (4) A parallel exemption—
- (a) takes effect on the date on which the relevant exemption from the Community prohibition takes effect or, in the case of a parallel exemption under subsection (2), would take effect if the agreement in question affected trade between Member States; and
  - (b) ceases to have effect—
    - (i) if the relevant exemption from the Community prohibition ceases to have effect; or
    - (ii) on being cancelled by virtue of subsection (5) or (7).
- (5) In such circumstances and manner as may be specified in rules made under section 51, the [F<sup>24</sup>OFT] may—
- (a) impose conditions or obligations subject to which a parallel exemption is to have effect;
  - (b) vary or remove any such condition or obligation;
  - (c) impose one or more additional conditions or obligations;
  - (d) cancel the exemption.
- (6) In such circumstances as may be specified in rules made under section 51, the date from which cancellation of an exemption is to take effect may be earlier than the date on which notice of cancellation is given.
- (7) Breach of a condition imposed by the [F<sup>24</sup>OFT] has the effect of cancelling the exemption.
- (8) In exercising [F<sup>25</sup>its] powers under this section, the [F<sup>24</sup>OFT] may require any person who is a party to the agreement in question to give [F<sup>25</sup>it] such information as [F<sup>25</sup>it] may require.
- (9) For the purpose of this section references to an agreement being exempt from the Community prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation [F<sup>26</sup>other than the EC Competition Regulation] or a decision by the Commission.
- (10) In this section—
- “the Community prohibition” means the prohibition contained in—
    - (a) [F<sup>27</sup>Article 81(1);]
    - (b) any corresponding provision replacing, or otherwise derived from, that provision;
    - (c) such other Regulation as the Secretary of State may by order specify; and
- “Regulation” means a Regulation adopted by the Commission or by the Council.

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (11) This section has effect in relation to the prohibition contained in paragraph 1 of Article 53 of the EEA Agreement (and the EFTA Surveillance Authority) as it has effect in relation to the Community prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.

#### Textual Amendments

- F23** S. 10(1)(b) and word substituted for s. 10(1)(b)(c) (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 7\(2\)](#) (with reg. 7)
- F24** Word in s. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(8\)\(a\)](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F25** Words in s. 10(8) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(8\)\(b\)](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F26** Words in s. 10(9) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 7\(3\)](#)
- F27** Words in s. 10(10) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 7\(4\)](#)

## 11 Exemption for certain other agreements.

- (1) The fact that a ruling may be given by virtue of [<sup>F28</sup>Article 84] of the Treaty on the question whether or not agreements of a particular kind are prohibited by [<sup>F29</sup>Article 81(1)] does not prevent such agreements from being subject to the Chapter I prohibition.
- (2) But the Secretary of State may by regulations make such provision as he considers appropriate for the purpose of granting an exemption from the Chapter I prohibition, in prescribed circumstances, in respect of such agreements.
- (3) An exemption from the Chapter I prohibition by virtue of regulations under this section is referred to in this Part as a section 11 exemption.

#### Textual Amendments

- F28** Words in s. 11(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 8\(2\)\(a\)](#)
- F29** Words in s. 11(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 8\(2\)\(b\)](#)

### *Notification*

## 12 Requests for [<sup>F30</sup>OFT] to examine agreements.

- [<sup>F31</sup>(1) Sections 13 and 14 provide for an agreement to be examined by the [<sup>F30</sup>OFT] on the application of a party to the agreement who thinks that it may infringe the Chapter I prohibition.
- (2) Schedule 5 provides for the procedure to be followed—
- (a) by any person making such an application; and
  - (b) by the [<sup>F30</sup>OFT], in considering such an application.

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The Secretary of State may by regulations make provision as to the application of sections 13 to 16 and Schedule 5, with such modifications (if any) as may be prescribed, in cases where the [F30OFT]—
- (a) has given a direction withdrawing an exclusion; or
  - (b) is considering whether to give such a direction.]

#### Textual Amendments

**F30** Words in s. 12 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(9\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F31** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 9](#) (with [reg. 6\(2\)](#))

#### Commencement Information

**I3** S. 12 wholly in force; s. 12 not in force at Royal Assent see s. 76(3); s. 12(3) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); s. 12(1)(2) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

### 13 Notification for guidance.

- [F31(1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [F32OFT] of the agreement; and
  - (b) apply to [F32the OFT] for guidance.
- (2) On an application under this section, the [F32OFT] may give the applicant guidance as to whether or not, in [F32its] view, the agreement is likely to infringe the Chapter I prohibition.
- (3) If the [F32OFT] considers that the agreement is likely to infringe the prohibition if it is not exempt, [F32its] guidance may indicate—
- (a) whether the agreement is likely to be exempt from the prohibition under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (b) whether [F32it] would be likely to grant the agreement an individual exemption if asked to do so.
- (4) If an agreement to which the prohibition applies has been notified to the [F32OFT] under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the [F32OFT] when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.]

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F31** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F32** Words in s. 13 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(10)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Modifications etc. (not altering text)

- C16** S. 13 applied (with modifications) (1.3.2000) by S.I. 2000/263, **art. 4**

### 14 Notification for a decision.

- [<sup>F31</sup>(1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [<sup>F33</sup>OFT] of the agreement; and
  - (b) apply to [<sup>F33</sup>the OFT] for a decision.
- (2) On an application under this section, the [<sup>F33</sup>OFT] may make a decision as to—
- (a) whether the Chapter I prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.
- (3) If an agreement is notified to the [<sup>F33</sup>OFT] under this section, the application may include a request for the agreement to which it relates to be granted an individual exemption.
- (4) If an agreement to which the prohibition applies has been notified to the [<sup>F33</sup>OFT] under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the [<sup>F33</sup>OFT] when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.]

#### Textual Amendments

- F31** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F33** Words in s. 14 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(11)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Modifications etc. (not altering text)

- C17** S. 14 applied (with modifications) (1.3.2000) by S.I. 2000/263, **art. 5**

### 15 Effect of guidance.

- [<sup>F31</sup>(1) This section applies to an agreement if the [<sup>F34</sup>OFT] has determined an application under section 13 by giving guidance that—

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the agreement is unlikely to infringe the Chapter I prohibition, regardless of whether or not it is exempt;
  - (b) the agreement is likely to be exempt under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (c) [F34:it] would be likely to grant the agreement an individual exemption if asked to do so.
- (2) The [F34:OFT] is to take no further action under this Part with respect to an agreement to which this section applies, unless—
- (a) [F34:it] has reasonable grounds for believing that there has been a material change of circumstance since [F34:it] gave [F34:its] guidance;
  - (b) [F34:it] has a reasonable suspicion that the information on which [F34:it] based [F34:its] guidance was incomplete, false or misleading in a material particular;
  - (c) one of the parties to the agreement applies to [F34:it] for a decision under section 14 with respect to the agreement; or
  - (d) a complaint about the agreement has been made to [F34:it] by a person who is not a party to the agreement.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the [F34:OFT] may remove the immunity given by subsection (3) if—
- (a) [F34:it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [F34:it] considers it likely that the agreement will infringe the prohibition; and
  - (c) [F34:it] gives notice in writing to the party on whose application the guidance was given that [F34:it] is removing the immunity as from the date specified in [F34:its] notice.
- (5) If the [F34:OFT] has a reasonable suspicion that information—
- (a) on which [F34:it] based [F34:its] guidance, and
  - (b) which was provided to [F34:it] by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

#### Textual Amendments

- F31** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F34** Words in s. 15 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(12\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

#### Modifications etc. (not altering text)

- C18** S. 15 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 6](#)

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 16 Effect of a decision that the Chapter I prohibition has not been infringed.

- [<sup>F31</sup>(1) This section applies to an agreement if the [<sup>F35</sup>OFT] has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The [<sup>F35</sup>OFT] is to take no further action under this Part with respect to the agreement unless—
- (a) [<sup>F35</sup>it] has reasonable grounds for believing that there has been a material change of circumstance since [<sup>F35</sup>it] gave [<sup>F35</sup>its] decision; or
  - (b) [<sup>F35</sup>it] has a reasonable suspicion that the information on which [<sup>F35</sup>it] based [<sup>F35</sup>its] decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the [<sup>F35</sup>OFT] may remove the immunity given by subsection (3) if—
- (a) [<sup>F35</sup>it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [<sup>F35</sup>it] considers that it is likely that the agreement will infringe the prohibition; and
  - (c) [<sup>F35</sup>it] gives notice in writing to the party on whose application the decision was made that [<sup>F35</sup>it] is removing the immunity as from the date specified in [<sup>F35</sup>its] notice.
- (5) If the [<sup>F35</sup>OFT] has a reasonable suspicion that information—
- (a) on which [<sup>F35</sup>it] based [<sup>F35</sup>its] decision, and
  - (b) which was provided to [<sup>F35</sup>it] by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

### Textual Amendments

**F31** Ss. 12-16 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))

**F35** Words in s. 16 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(13\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

### Modifications etc. (not altering text)

**C19** S. 16 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 7](#)

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER II

### ABUSE OF DOMINANT POSITION

#### *Introduction*

#### **17 Enactments replaced.**

Sections 2 to 10 of the <sup>M2</sup>Competition Act 1980 (control of anti-competitive practices) shall cease to have effect.

#### **Marginal Citations**

**M2** 1980 c. 21.

#### *The prohibition*

#### **18 Abuse of dominant position.**

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section—

“dominant position” means a dominant position within the United Kingdom; and

“the United Kingdom” means the United Kingdom or any part of it.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

#### **Modifications etc. (not altering text)**

**C20** S. 18(1) excluded (18.6.2001) by 2000 c. 8, s. 164(3)(5); S.I. 2001/1820, art. 2, Sch.  
s. 18(1) excluded (3.9.2001) by 2000 c. 8, s. 312(2); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Excluded cases*

## 19 Excluded cases.

- (1) The Chapter II prohibition does not apply in any of the cases in which it is excluded by or as a result of—
  - (a) Schedule 1 (mergers and concentrations); or
  - (b) Schedule 3 (general exclusions).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.
- (4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

### *Notification*

## 20 Requests for [F36OFT] to consider conduct.

- [F37](1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the [F36OFT] on the application of that person.
- (2) Schedule 6 provides for the procedure to be followed—
  - (a) by any person making an application, and
  - (b) by the [F36OFT], in considering an application.]

#### **Textual Amendments**

**F36** Words in s. 20 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(14\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

**F37** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))

## 21 Notification for guidance.

- [F37](1) A person who applies for conduct to be considered under this section must—
  - (a) notify the [F38OFT] of it; and
  - (b) apply to [F38the OFT] for guidance.
- (2) On an application under this section, the [F38OFT] may give the applicant guidance as to whether or not, in [F38its] view, the conduct is likely to infringe the Chapter II prohibition.]



*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F37** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F38** Words in s. 21 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(15)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 22 Notification for a decision.

- [<sup>F37</sup>(1) A person who applies for conduct to be considered under this section must—
- (a) notify the [<sup>F39</sup>OFT] of it; and
  - (b) apply to [<sup>F39</sup>the OFT] for a decision.
- (2) On an application under this section, the [<sup>F39</sup>OFT] may make a decision as to—
- (a) whether the Chapter II prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion.]

#### Textual Amendments

- F37** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F39** Words in s. 22 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(16)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## 23 Effect of guidance.

- [<sup>F37</sup>(1) This section applies to conduct if the [<sup>F40</sup>OFT] has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The [<sup>F40</sup>OFT] is to take no further action under this Part with respect to the conduct to which this section applies, unless—
- (a) [<sup>F40</sup>it] has reasonable grounds for believing that there has been a material change of circumstance since [<sup>F40</sup>it] gave [<sup>F40</sup>its] guidance;
  - (b) [<sup>F40</sup>it ] has a reasonable suspicion that the information on which [<sup>F40</sup>it] based [<sup>F40</sup>its] guidance was incomplete, false or misleading in a material particular; or
  - (c) a complaint about the conduct has been made to [<sup>F40</sup>it].
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the [<sup>F40</sup>OFT] may remove the immunity given by subsection (3) if—
- (a) [<sup>F40</sup>it ] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) [<sup>F40</sup>it ] considers that it is likely that the conduct will infringe the prohibition; and

*Status: Point in time view as at 01/10/2009.*

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- (c) [F<sup>40</sup>:it ] gives notice in writing to the undertaking on whose application the guidance was given that [F<sup>40</sup>:it] is removing the immunity as from the date specified in [F<sup>40</sup>:its] notice.
- (5) If the [F<sup>40</sup>:OFT] has a reasonable suspicion that information—
- (a) on which [F<sup>40</sup>:it] based [F<sup>40</sup>:its] guidance, and
  - (b) which was provided to [F<sup>40</sup>:it] by an undertaking engaging in the conduct,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

#### Textual Amendments

- F37** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 9](#) (with reg. 6(2))
- F40** Words in s. 23 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(17\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

## 24 Effect of a decision that the Chapter II prohibition has not been infringed.

- [F<sup>37</sup>(1) This section applies to conduct if the [F<sup>41</sup>:OFT] has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.
- (2) The [F<sup>41</sup>:OFT] is to take no further action under this Part with respect to the conduct unless—
- (a) [F<sup>41</sup>:it] has reasonable grounds for believing that there has been a material change of circumstance since [F<sup>41</sup>:it] gave [F<sup>41</sup>:its] decision; or
  - (b) [F<sup>41</sup>:it] has a reasonable suspicion that the information on which [F<sup>41</sup>:it] based [F<sup>41</sup>:its] decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the [F<sup>41</sup>:OFT] may remove the immunity given by subsection (3) if—
- (a) [F<sup>41</sup>:it] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) [F<sup>41</sup>:it] considers that it is likely that the conduct will infringe the prohibition; and
  - (c) [F<sup>41</sup>:it] gives notice in writing to the undertaking on whose application the decision was made that [F<sup>41</sup>:it] is removing the immunity as from the date specified in [F<sup>41</sup>:its] notice.
- (5) If the [F<sup>41</sup>:OFT] has a reasonable suspicion that information—
- (a) on which [F<sup>41</sup>:it] based [F<sup>41</sup>:its] decision, and
  - (b) which was provided to [F<sup>41</sup>:it] by an undertaking engaging in the conduct,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.]

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F37** Ss. 20-24 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 9** (with reg. 6(2))
- F41** Words in s. 24 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(18)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

## CHAPTER III

### INVESTIGATION AND ENFORCEMENT

#### *Investigations*

#### [<sup>F42</sup>25 Power of OFT to investigate

- (1) In any of the following cases, the OFT may conduct an investigation.
- (2) The first case is where there are reasonable grounds for suspecting that there is an agreement which—
  - (a) may affect trade within the United Kingdom; and
  - (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (3) The second case is where there are reasonable grounds for suspecting that there is an agreement which—
  - (a) may affect trade between Member States; and
  - (b) has as its object or effect the prevention, restriction or distortion of competition within the Community.
- (4) The third case is where there are reasonable grounds for suspecting that the Chapter II prohibition has been infringed.
- (5) The fourth case is where there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed.
- (6) The fifth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade within the United Kingdom; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (7) The sixth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade between Member States; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within the Community.
- (8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the OFT—
  - (a) considers that the agreement is exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption; and

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- (b) does not have reasonable grounds for suspecting that the circumstances may be such that it could exercise its power to cancel the exemption.
- (9) Subsection (3) does not permit an investigation to be conducted if the OFT—
  - (a) considers that the agreement is an agreement to which the prohibition in Article 81(1) is inapplicable by virtue of a regulation of the Commission (“the relevant regulation”); and
  - (b) does not have reasonable grounds for suspecting that the conditions set out in Article 29(2) of the EC Competition Regulation for the withdrawal of the benefit of the relevant regulation may be satisfied in respect of that agreement.
- (10) Subsection (6) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption.
- (11) Subsection (7) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was an agreement to which the prohibition in Article 81(1) was inapplicable by virtue of a regulation of the Commission.
- (12) It is immaterial for the purposes of subsection (6) or (7) whether the agreement in question remains in existence.]

#### Textual Amendments

**F42** S. 25 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 10](#)

## 26 Powers when conducting investigations.

- (1) For the purposes of an investigation [<sup>F43</sup>under section 25], the [<sup>F44</sup>OFT] may require any person to produce to [<sup>F44</sup>it] a specified document, or to provide [<sup>F44</sup>it] with specified information, which [<sup>F44</sup>it] considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—
  - (a) the subject matter and purpose of the investigation; and
  - (b) the nature of the offences created by sections 42 to 44.
- (4) In subsection (1) “specified” means—
  - (a) specified, or described, in the notice; or
  - (b) falling within a category which is specified, or described, in the notice.
- (5) The [<sup>F45</sup>OFT] may also specify in the notice—
  - (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
  - (a) if the document is produced—
    - (i) to take copies of it or extracts from it;

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- (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
- (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

#### Textual Amendments

- F43** Words in s. 26(1) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 11** (with reg. 6(2))
- F44** Words in s. 26(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(20)(a)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F45** Word in s. 26(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(20)(b)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

#### Modifications etc. (not altering text)

- C21** S. 26 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)
- C22** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; [S.I. 2003/1397](#), art. 2(1), **Sch.**)
- C23** Ss. 26-30 applied by [S.I. 2002/3150 \(N.I. 4\)](#), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), **3**; [S.R. 2005/514](#), art. 2)

## 27 [F46]Power to enter business premises without a warrant]

- (1) Any officer of the [F47]OFT] who is authorised in writing by the [F47]OFT] to do so (“an investigating officer”) may enter [F48]any business premises] in connection with an investigation [F49]under section 25].
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—
  - (a) gives at least two working days’ notice of the intended entry;
  - (b) indicates the subject matter and purpose of the investigation; and
  - (c) indicates the nature of the offences created by sections 42 to 44.
- (3) Subsection (2) does not apply—
  - (a) if the [F47]OFT] has a reasonable suspicion that the premises are, or have been, occupied by—
    - (i) a party to an agreement which [F50]it] is investigating [F51]section 25]; or
    - (ii) an undertaking the conduct of which [F50]it] is investigating under [F52]section 25]; or
  - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
  - (a) evidence of his authorisation; and
  - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—

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- (a) take with him such equipment as appears to him to be necessary;
- (b) require any person on the premises—
  - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
  - (ii) if the document is produced, to provide an explanation of it;
- (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
- (d) take copies of, or extracts from, any document which is produced;
- (e) require any information which is [<sup>F53</sup>stored in any electronic form] and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
  - (i) in which it can be taken away, and
  - (ii) in which it is visible and legible [<sup>F54</sup>or from which it can readily be produced in a visible and legible form].
- [<sup>F55</sup>(f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.]

[<sup>F56</sup>(6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.]

#### Textual Amendments

- F46** Words in s. 27 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(6)**
- F47** Word in s. 27 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(21)(a)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F48** Words in s. 27(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(2)(a)**
- F49** Words in s. 27(1) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(2)(b)** (with reg. 6(2))
- F50** Word in s. 27(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(21)(b)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F51** Words in s. 27(3)(a)(i) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(3)(a)**
- F52** Words in s. 27(3)(a)(ii) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(3)(b)**
- F53** Words in s. 27(5)(e) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(a)**; [S.I. 2003/708](#), art. 2(k)
- F54** Words in s. 27(5)(e) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(b)**; [S.I. 2003/708](#), art. 2(k)
- F55** S. 27(5)(f) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(4)**
- F56** S. 27(6) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 12(5)**

#### Modifications etc. (not altering text)

- C22** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; [S.I. 2003/1397](#), art. 2(1), **Sch.**)

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- C23** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; [S.R. 2005/514](#), art. 2)
- C24** S. 27 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2), 279**)

## 28 <sup>[F57]</sup>Power to enter business premises under a warrant].

- (1) On an application made by the <sup>[F58]</sup>OFT] to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on <sup>[F59]</sup>any business premises] documents—
    - (i) the production of which has been required under section 26 or 27; and
    - (ii) which have not been produced as required;
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on <sup>[F60]</sup>any business premises] documents which the <sup>[F58]</sup>OFT] has power under section 26 to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
  - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the <sup>[F61]</sup>OFT], and any other of <sup>[F62]</sup>the OFT’s officers whom the OFT] has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (f) to require any information which is <sup>[F63]</sup>stored in any electronic form] and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is visible and legible <sup>[F64]</sup>or from which it can readily be produced in a visible and legible form].

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- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- [<sup>F65</sup>(3A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.]
- (4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- [<sup>F66</sup>(8) In this section “business premises” has the same meaning as in section 27.]

#### Textual Amendments

- F57** Words in s. 28 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(4)**
- F58** Word in s. 28(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(22)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F59** Words in s. 28(1)(a) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(2)(a)**
- F60** Words in s. 28(1)(b)(i) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(2)(b)**
- F61** Word in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(22)(b)(i)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F62** Words in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(22)(b)(ii)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F63** Words in s. 28(2)(f) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(a)**; [S.I. 2003/708](#), art. 2(k)
- F64** Words in s. 28(2)(f) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\)](#), s. 138(2), **Sch. 2 para. 21(b)**; [S.I. 2003/708](#), art. 2(k)
- F65** S. 28(3A) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 203(2)**, 279; [S.I. 2003/1397](#), art. 2(1), Sch.
- F66** S. 28(8) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 13(3)**

#### Modifications etc. (not altering text)

- C22** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; [S.I. 2003/1397](#), art. 2(1), Sch.)
- C23** Ss. 26-30 applied by [S.I. 2002/3150 \(N.I. 4\)](#), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; [S.R. 2005/514](#), art. 2)



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- C25** S. 28 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))
- C26** S. 28(2): powers of seizure extended (prosp.) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), **Sch. 1 Pt. 1 para. 67**
- C27** S. 28(2) powers of seizure extended (1.6.2004) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 50, 138\(2\), Sch. 1 para. 67](#) (with ss. 52-54, 68); S.I. 2004/1376, art. 2(b)
- C28** S. 28(2)(f) modified (prosp.) by 2001 c. 16, **ss. 63(2)(h)**, 138(2)
- C29** S. 28(2)(f) modified (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 63, 138\(2\)](#); S.I. 2003/708, art. 2(a)
- C30** S. 28(7) applied (prosp.) by 2001 c. 16, **ss. 57(1)(n)(2)(4)**, 138(2)
- C31** S. 28(7) applied (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 57\(1\)\(n\)](#), 138(2) (with s. 57(4)); S.I. 2003/708, art. 2(a)

## <sup>F67</sup>28A Power to enter domestic premises under a warrant

- (1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
  - (a) there are reasonable grounds for suspecting that there are on any domestic premises documents—
    - (i) the production of which has been required under section 26; and
    - (ii) which have not been produced as required; or
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any domestic premises documents which the OFT has power under section 26 to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise a named officer of the OFT, and any other of its officers whom the OFT has authorised in writing to accompany the named officer—
  - (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and

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- (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- (9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—
- (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
  - (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.]

#### Textual Amendments

**F67** S. 28A inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 14**

#### Modifications etc. (not altering text)

**C23** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), **3**; S.R. 2005/514, art. 2)

## 29 Entry of premises under warrant: supplementary.

- (1) A warrant issued under section 28 [<sup>F68</sup>or 28A] must indicate—
- (a) the subject matter and purpose of the investigation;
  - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 [<sup>F69</sup>or 28A] are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

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- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
- “named officer” means the officer named in the warrant; and
- “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

#### Textual Amendments

- F68** Words in s. 29(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 15(2)**
- F69** Words in s. 29(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 15(3)**

#### Modifications etc. (not altering text)

- C22** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2), 279**; [S.I. 2003/1397](#), art. 2(1), Sch.)
- C23** Ss. 26-30 applied by [S.I. 2002/3150 \(N.I. 4\)](#), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), **3**; [S.R. 2005/514](#), art. 2)
- C32** S. 29 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2), 279**)

### 30 Privileged communications.

- (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—
- (a) between a professional legal adviser and his client, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
- which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (3) In the application of this section to Scotland—
- (a) references to the High Court are to be read as references to the Court of Session; and
- (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

#### Modifications etc. (not altering text)

- C22** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2), 279**; [S.I. 2003/1397](#), art. 2(1), Sch.)

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- C23** Ss. 26-30 applied by S.I. 2002/3150 (N.I. 4), art. 13C(2) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), arts. 1(3), 3; S.R. 2005/514, art. 2)
- C33** S. 30 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

### [<sup>F70</sup>30A Use of statements in prosecution

A statement made by a person in response to a requirement imposed by virtue of any of sections 26 [<sup>F71</sup>to 28A] may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.]

#### Textual Amendments

- F70** S. 30A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 198**, 279; S.I. 2003/1397, art. 2(1), Sch.
- F71** Words in s. 30A substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 16**

### [<sup>F72</sup>31 Decisions following an investigation.

- (1) If as a result of an investigation the OFT proposes to make a decision, the OFT must—
  - (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
  - (b) give that person (or those persons) an opportunity to make representations.]

- [<sup>F72</sup>(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the OFT—
- (a) that the Chapter I prohibition has been infringed;
  - (b) that the Chapter II prohibition has been infringed;
  - (c) that the prohibition in Article 81(1) has been infringed; or
  - (d) that the prohibition in Article 82 has been infringed.]

#### Textual Amendments

- F72** S. 31 substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 17**

### [<sup>F73</sup>31A Commitments

- (1) Subsection (2) applies in a case where the OFT has begun an investigation under section 25 but has not made a decision (within the meaning given by section 31(2)).
- (2) For the purposes of addressing the competition concerns it has identified, the OFT may accept from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.

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- (3) At any time when commitments are in force the OFT may accept from the person (or persons) who gave the commitments—
  - (a) a variation of them if it is satisfied that the commitments as varied will address its current competition concerns;
  - (b) commitments in substitution for them if it is satisfied that the new commitments will address its current competition concerns.
- (4) Commitments under this section—
  - (a) shall come into force when accepted; and
  - (b) may be released by the OFT where—
    - (i) it is requested to do so by the person (or persons) who gave the commitments; or
    - (ii) it has reasonable grounds for believing that the competition concerns referred to in subsection (2) or (3) no longer arise.
- (5) The provisions of Schedule 6A to this Act shall have effect with respect to procedural requirements for the acceptance, variation and release of commitments under this section.]

#### Textual Amendments

**F73** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 18](#)

#### [<sup>F73</sup> 31B Effect of commitments under section 31A

- (1) Subsection (2) applies if the OFT has accepted commitments under section 31A (and has not released them).
- (2) In such a case, the OFT shall not—
  - (a) continue the investigation,
  - (b) make a decision (within the meaning of section 31(2)), or
  - (c) give a direction under section 35,in relation to the agreement or conduct which was the subject of the investigation (but this subsection is subject to subsections (3) and (4)).
- (3) Nothing in subsection (2) prevents the OFT from taking any action in relation to competition concerns which are not addressed by commitments accepted by it.
- (4) Subsection (2) also does not prevent the OFT from continuing the investigation, making a decision, or giving a direction where—
  - (a) it has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted;
  - (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
  - (c) it has reasonable grounds for suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular.
- (5) If, pursuant to subsection (4), the OFT makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.]

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#### Textual Amendments

**F73** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**

### [<sup>F73</sup> 31C Review of commitments

- (1) Where the OFT is reviewing or has reviewed the effectiveness of commitments accepted under section 31A it must, if requested to do so by the Secretary of State, prepare a report of its findings.
- (2) The OFT must—
  - (a) give any report prepared by it under subsection (1) to the Secretary of State; and
  - (b) publish the report.]

#### Textual Amendments

**F73** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**

### [<sup>F73</sup> 31D Guidance

- (1) The OFT must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.
- (2) The OFT may at any time alter the guidance.
- (3) If the guidance is altered, the OFT must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The OFT may, after consulting the Secretary of State, choose how it publishes its guidance.
- (6) If the OFT is preparing or altering guidance under this section it must consult such persons as it considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) When exercising its discretion to accept commitments under section 31A, the OFT must have regard to the guidance for the time being in force under this section.]

#### Textual Amendments

**F73** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**

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### **[<sup>F73</sup>31E Enforcement of commitments**

- (1) If a person from whom the OFT has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the OFT may apply to the court for an order—
  - (a) requiring the defaulter to make good his default within a time specified in the order; or
  - (b) if the commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all the costs of, or incidental to, the application for the order to be borne by—
  - (a) the person in default; or
  - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.]

#### **Textual Amendments**

- F73** Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**

### *Enforcement*

### **32 Directions in relation to agreements.**

- (1) If the [<sup>F74</sup>OFT] has made a decision that an agreement infringes the Chapter I prohibition [<sup>F75</sup>or that it infringes the prohibition in Article 81(1)], [<sup>F74</sup>it] may give to such person or persons as [<sup>F74</sup>it] considers appropriate such directions as [<sup>F74</sup>it] considers appropriate to bring the infringement to an end.
- (2) [<sup>F76</sup>Subsection (1) applies whether the [<sup>F77</sup>OFT's] decision is made on [<sup>F77</sup>its] own initiative or on an application made to [<sup>F77</sup>it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the parties to the agreement to modify the agreement; or
  - (b) requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

#### **Textual Amendments**

- F74** Words in s. 32(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(24)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F75** Words in s. 32(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 19(2)**
- F76** S. 32(2) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 19(3)** (with reg. 6(2))

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**F77** Words in s. 32(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(24\) \(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 33 Directions in relation to conduct.

- (1) If the [<sup>F78</sup>OFT] has made a decision that conduct infringes the Chapter II prohibition [<sup>F79</sup>or that it infringes the prohibition in Article 82], [<sup>F78</sup>it] may give to such person or persons as [<sup>F78</sup>it] considers appropriate such directions as [<sup>F78</sup>it] considers appropriate to bring the infringement to an end.
- (2) [<sup>F80</sup>Subsection (1) applies whether the [<sup>F81</sup>OFT's] decision is made on [<sup>F81</sup>its] own initiative or on an application made to [<sup>F81</sup>it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the person concerned to modify the conduct in question; or
  - (b) requiring him to cease that conduct.
- (4) A direction under this section must be given in writing.

#### Textual Amendments

- F78** Words in s. 33(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(25\) \(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F79** Words in s. 33(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 20\(2\)](#)
- F80** S. 33(2) ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 20\(3\)](#) (with [reg. 6\(2\)](#))
- F81** Words in s. 33(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(25\) \(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 34 Enforcement of directions.

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the [<sup>F82</sup>OFT] may apply to the court for an order—
  - (a) requiring the defaulter to make good his default within a time specified in the order; or
  - (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
  - (a) the person in default; or
  - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.



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### Textual Amendments

**F82** Word in s. 34 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(26\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 35 Interim measures.

- [<sup>F83</sup>(1) Subject to subsections (8) and (9), this section applies if the OFT has begun an investigation under section 25 and not completed it (but only applies so long as the OFT has power under section 25 to conduct that investigation).]
- (2) If the [<sup>F84</sup>OFT] considers that it is necessary for [<sup>F84</sup>it] to act under this section as a matter of urgency for the purpose—
- of preventing serious, irreparable damage to a particular person or category of person, or
  - of protecting the public interest,
- [<sup>F84</sup>it] may give such directions as [<sup>F84</sup>it] considers appropriate for that purpose.
- (3) Before giving a direction under this section, the [<sup>F84</sup>OFT] must—
- give written notice to the person (or persons) to whom [<sup>F84</sup>it] proposes to give the direction; and
  - give that person (or each of them) an opportunity to make representations.
- (4) A notice under subsection (3) must indicate the nature of the direction which the [<sup>F84</sup>OFT] is proposing to give and [<sup>F84</sup>its] reasons for wishing to give it.
- [<sup>F85</sup>(5) A direction given under this section may if the circumstances permit be replaced by—
- a direction under section 32 or (as appropriate) section 33, or
  - commitments accepted under section 31A,
- but, subject to that, has effect while this section applies.]
- (6) In the [<sup>F86</sup>cases mentioned in section 25(2), (3), (6) and (7)], sections 32(3) and 34 also apply to directions given under this section.
- (7) In the [<sup>F87</sup>cases mentioned in section 25(4) and (5)], sections 33(3) and 34 also apply to directions given under this section.
- [<sup>F88</sup>(8) In the case of an investigation conducted by virtue of section 25(2) or (6), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is exempt from the Chapter I prohibition as a result of section 9(1); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—
- may affect trade within the United Kingdom, and
  - has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (9) In the case of an investigation conducted by virtue of section 25(3) or (7), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that

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the suspected agreement is an agreement to which the prohibition in Article 81(1) is inapplicable because the agreement satisfies the conditions in Article 81(3); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade between Member States, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the Community.]

#### Textual Amendments

- F83** S. 35(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(2\)](#)
- F84** Words in s. 35 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(27\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F85** S. 35(5) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(3\)](#)
- F86** Words in s. 35(6) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(4\)](#)
- F87** Words in s. 35(7) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(5\)](#)
- F88** S. 35(8)(9) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 21\(6\)](#)

### 36 [F89Penalties].

- (1) On making a decision that an agreement has infringed the Chapter I prohibition [F90 or that it has infringed the prohibition in Article 81(1)], the [F91OFT] may require an undertaking which is a party to the agreement to pay [F92the OFT] a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition [F93 or that it has infringed the prohibition in Article 82], the [F91OFT] may require the undertaking concerned to pay [F92the OFT] a penalty in respect of the infringement.
- (3) The [F91OFT] may impose a penalty on an undertaking under subsection (1) or (2) only if [F94the OFT] is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
- (4) Subsection (1) is subject to section 39 and does not apply [F95 in relation to a decision that an agreement has infringed the Chapter I prohibition] if the [F91OFT] is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.
- (5) Subsection (2) is subject to section 40 and does not apply [F96 in relation to a decision that conduct has infringed the Chapter II prohibition] if the [F91OFT] is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.
- (6) Notice of a penalty under this section must—
  - (a) be in writing; and
  - (b) specify the date before which the penalty is required to be paid.

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- (7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.
- (8) No penalty fixed by the [F91OFT] under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).
- (9) Any sums received by the [F91OFT] under this section are to be paid into the Consolidated Fund.

#### Textual Amendments

- F89** Word in s. 36 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(6\)](#)
- F90** Words in s. 36(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(2\)](#)
- F91** Word in s. 36 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(28\)\(a\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F92** Words in s. 36(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(28\)\(b\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F93** Words in s. 36(2) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(3\)](#)
- F94** Words in s. 36(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(28\)\(c\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F95** Words in s. 36(4) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(4\)](#)
- F96** Words in s. 36(5) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 22\(5\)](#)

## 37 Recovery of penalties.

- (1) If the specified date in a penalty notice has passed and—
  - (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
  - (b) such an appeal has been made and determined,the [F97OFT] may recover from the undertaking, as a civil debt due to [F97the OFT], any amount payable under the penalty notice which remains outstanding.
- (2) In this section—

“penalty notice” means a notice given under section 36; and

“specified date” means the date specified in the penalty notice.

#### Textual Amendments

- F97** Words in s. 37 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(29\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

*Status: Point in time view as at 01/10/2009.*

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### 38 The appropriate level of a penalty.

- (1) The [F98OFT] must prepare and publish guidance as to the appropriate amount of any penalty under this Part.

[F99(1A) The guidance must include provision about the circumstances in which, in determining a penalty under this Part, the OFT may take into account effects in another Member State of the agreement or conduct concerned.]

- (2) The [F98OFT] may at any time alter the guidance.
- (3) If the guidance is altered, the [F98OFT] must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The [F98OFT] may, after consulting the Secretary of State, choose how [F98it] publishes [F98its] guidance.
- (6) If the [F98OFT] is preparing or altering guidance under this section [F98it] must consult such persons as [F98it] considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) When setting the amount of a penalty under this Part, the [F98OFT] must have regard to the guidance for the time being in force under this section.
- (9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the [F98OFT], an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.
- (10) In subsection (9) “the appropriate court” means—
- (a) in relation to England and Wales, the Court of Appeal;
  - (b) in relation to Scotland, the Court of Session;
  - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
  - [F100(d) the Supreme Court.]

#### Textual Amendments

- F98** Words in s. 38 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(30\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F99** S. 38(1A) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 23\(2\)](#)
- F100** S. 38(10)(d) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), [Sch. 9 para. 65\(2\)](#); [S.I. 2009/1604](#), art. 2(d)

#### Commencement Information

- I4** S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 76(3); s. 38(1)-(7) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); s. 38(8)-(10) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

*Status: Point in time view as at 01/10/2009.*

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### 39 [F101 Limited immunity in relation to the Chapter I prohibition].

- (1) In this section “small agreement” means an agreement—
  - (a) which falls within a category prescribed for the purposes of this section; but
  - (b) is not a price fixing agreement.
- (2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—
  - (a) the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the agreement (determined in that way).
- (3) A party to a small agreement is immune from the effect of section 36(1) [F102 so far as that provision relates to decisions about infringement of the Chapter I prohibition]; but the [F103 OFT] may withdraw that immunity under subsection (4).
- (4) If the [F103 OFT] has investigated a small agreement, [F103 it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [F103 its] investigation, [F103 it] considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The [F103 OFT] must give each of the parties in respect of which immunity is withdrawn written notice of [F103 its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the [F103 OFT] must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.
- (9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

#### Textual Amendments

**F101** Words in s. 39 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 24(3)**

**F102** Words in s. 39(3) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 24(2)**

**F103** Words in s. 39 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(31)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

### 40 Limited immunity in relation to the Chapter II prohibition.

- (1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.
- (2) The criteria by reference to which a category is prescribed may, in particular, include—

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- (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the conduct (determined in that way).
- (3) A person is immune from the effect of section 36(2)<sup>F104</sup>, so far as that provision relates to decisions about infringement of the Chapter II prohibition,] if <sup>F105</sup>its] conduct is conduct of minor significance; but the <sup>F106</sup>OFT] may withdraw that immunity under subsection (4).
- (4) If the <sup>F106</sup>OFT] has investigated conduct of minor significance, <sup>F107</sup>it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of <sup>F107</sup>its] investigation, <sup>F107</sup>it] considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The <sup>F106</sup>OFT] must give the person, or persons, whose immunity has been withdrawn written notice of <sup>F105</sup>its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the <sup>F106</sup>OFT] must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

#### Textual Amendments

- F104** Words in s. 40(3) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 25(2)**
- F105** Word in s. 40(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(c)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F106** Word in s. 40 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(a)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)
- F107** Words in s. 40(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(32)(b)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

#### 41 Agreements notified to the Commission.

- <sup>F108</sup>(1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.
- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the <sup>F109</sup>OFT] from investigating it under this Part.

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- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.]

#### Textual Amendments

- F108** S. 41 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 26** (with reg. 6(2))
- F109** Word in s. 41 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(33)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### Offences

#### 42 Offences.

- (1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 26, 27<sup>[F110]</sup>, 28 or 28A].
- (2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—
- that the document was not in his possession or under his control; and
  - that it was not reasonably practicable for him to comply with the requirement.
- (3) If a person is charged with an offence under subsection (1) in respect of a requirement—
- to provide information,
  - to provide an explanation of a document, or
  - to state where a document is to be found,
- it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 26 or 27 is not an offence if the person imposing the requirement has failed to act in accordance with that section.
- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.
- (6) A person guilty of an offence under subsection (1) or (5) is liable—
- on summary conviction, to a fine not exceeding the statutory maximum;
  - on conviction on indictment, to a fine.
- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under <sup>[F111]</sup>section 28 or 28A] is guilty of an offence and liable—
- on summary conviction, to a fine not exceeding the statutory maximum;
  - on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### Textual Amendments

- F110** Words in s. 42(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 27(2)**

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**F111** Words in s. 42(7) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 27(3)**

#### 43 Destroying or falsifying documents.

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27<sup>F112</sup>, 28 or 28A]—
- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
  - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

##### Textual Amendments

**F112** Words in s. 43(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 28(2)**

#### 44 False or misleading information.

- (1) If information is provided by a person to the [<sup>F113</sup>OFT] in connection with any function of the [<sup>F113</sup>OFT] under this Part, that person is guilty of an offence if—
- (a) the information is false or misleading in a material particular, and
  - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
  - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the [<sup>F113</sup>OFT] in connection with any of [<sup>F113</sup>its] functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

##### Textual Amendments

**F113** Words in s. 44 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(34)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

##### Modifications etc. (not altering text)

**C34** S. 44 applied (18.6.2001) by [2000 c. 8](#), s. 399; [S.I. 2001/1820](#), art. 2, **Sch.**



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## CHAPTER IV

### THE COMPETITION COMMISSION AND APPEALS

#### *The Commission*

#### **45 The Competition Commission.**

- (1) There is to be a body corporate known as the Competition Commission.
- (2) The Commission is to have such functions as are conferred on it by or as a result of this Act.
- (3) The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission.
- (4) In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission.
- (5) The Secretary of State may by order make such consequential, supplemental and incidental provision as he considers appropriate in connection with—
  - (a) the dissolution of the Monopolies and Mergers Commission; and
  - (b) the transfer of functions effected by subsection (3).
- (6) An order made under subsection (5) may, in particular, include provision—
  - (a) for the transfer of property, rights, obligations and liabilities and the continuation of proceedings, investigations and other matters; or
  - (b) amending any enactment which makes provision with respect to the Monopolies and Mergers Commission or any of its functions.
- (7) [<sup>F114</sup>Schedules 7 and 7A make] further provision about the Competition Commission.
- [<sup>F115</sup>(8) The Secretary of State may by order make such modifications in Part 2 of Schedule 7 and in Schedule 7A (performance of the Competition Commission’s general functions) as he considers appropriate for improving the performance by the Competition Commission of its functions.]

#### **Textual Amendments**

**F114** Words in s. 45(7) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 187(1)**, 279; S.I. 2003/1397, **art. 2(1)**, Sch.

**F115** S. 45(8) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(35)**; S.I. 2003/1397, **art. 2(1)**, Sch.

#### *Appeals*

#### **46 Appealable decisions.**

- (1) Any party to an agreement in respect of which the [<sup>F116</sup>OFT] has made a decision may appeal to [<sup>F117</sup>the Tribunal] against, or with respect to, the decision.

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(2) Any person in respect of whose conduct the <sup>F116</sup>OFT] has made a decision may appeal to <sup>F117</sup>the Tribunal] against, or with respect to, the decision.

<sup>F118</sup>(3) In this section “decision” means a decision of the OFT—

- (a) as to whether the Chapter I prohibition has been infringed,
- (b) as to whether the prohibition in Article 81(1) has been infringed,
- (c) as to whether the Chapter II prohibition has been infringed,
- (d) as to whether the prohibition in Article 82 has been infringed,
- (e) cancelling a block or parallel exemption,
- (f) withdrawing the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation,
- (g) not releasing commitments pursuant to a request made under section 31A(4)(b)(i),
- (h) releasing commitments under section 31A(4)(b)(ii),
- (i) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,

and includes a direction under section 32, 33 or 35 and such other decisions under this Part as may be prescribed.]

(4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.

(5) Part I of Schedule 8 makes further provision about appeals.

#### Textual Amendments

**F116** Word in s. 46 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(36\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F117** Words in s. 46(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(a\)](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F118** S. 46(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 29\(2\)](#) (with reg. 8)

#### Modifications etc. (not altering text)

**C35** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 3](#)

Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 6](#)

### <sup>F119</sup>47 Third party appeals

<sup>F120</sup>(1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to—

- (a) a decision falling within paragraphs (a) to (f) of section 46(3);
- (b) a decision falling within paragraph (g) of section 46(3);
- (c) a decision of the OFT to accept or release commitments under section 31A, or to accept a variation of such commitments other than a variation which is not material in any respect;
- (d) a decision of the OFT to make directions under section 35;
- (e) a decision of the OFT not to make directions under section 35; or

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- (f) such other decision of the OFT under this Part as may be prescribed.]
- (2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.
- (3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.]

#### Textual Amendments

**F119** S. 47 substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 17, 279; S.I. 2003/1397, art. 2(1), Sch. (with art. 5)

**F120** S. 47(1) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 30(2) (with reg. 8)

#### Modifications etc. (not altering text)

**C36** Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, rule. 3  
Ss. 46-47 modified (1.3.2000) by S.I. 2000/261, rule 6

### [<sup>F121</sup>47A Monetary claims before Tribunal

- (1) This section applies to—
- any claim for damages, or
  - any other claim for a sum of money,
- which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.
- (2) In this section “relevant prohibition” means any of the following—
- the Chapter I prohibition;
  - the Chapter II prohibition;
  - the prohibition in Article 81(1) of the Treaty;
  - the prohibition in Article 82 of the Treaty;
  - the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community;
  - the prohibition in Article 66(7) of that Treaty.
- (3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.
- (4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.
- (5) But no claim may be made in such proceedings—
- until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and
  - otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.
- (6) The decisions which may be relied on for the purposes of proceedings under this section are —

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- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or
  - (e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.
- (7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under [<sup>F122</sup>section 46 or section 47];
  - (b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49<sup>F123</sup> ...;
  - (c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49<sup>F124</sup> ...;
  - (d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the [<sup>F125</sup>Supreme Court] from a decision on the further appeal;
- and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.
- (8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—
- (a) the period during which proceedings against the decision or finding may be instituted in the European Court; and
  - (b) if any such proceedings are instituted, the period before those proceedings are determined.
- (9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.
- (10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.]

#### Textual Amendments

**F121** S. 47A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 18(1)**, 279 (with [s. 18\(2\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#)

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- F122** Words in s. 47A(7)(a) substituted (20.7.2007) by [The EC Competition Law \(Articles 84 and 85\) Enforcement \(Revocation\) Regulations 2007 \(S.I. 2007/1846\)](#), regs. 1, **3(2)**
- F123** Words in s. 47A(7)(b) repealed (20.7.2007) by [The EC Competition Law \(Articles 84 and 85\) Enforcement \(Revocation\) Regulations 2007 \(S.I. 2007/1846\)](#), reg. 1, **Sch.**
- F124** Words in s. 47A(7)(c) repealed (20.7.2007) by [The EC Competition Law \(Articles 84 and 85\) Enforcement \(Revocation\) Regulations 2007 \(S.I. 2007/1846\)](#), reg. 1, **Sch.**
- F125** Words in s. 47A(7)(d) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 9 para. 65(3)**; S.I. 2009/1604, art. 2(d)

## <sup>F126</sup> 47B Claims brought on behalf of consumers

- (1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.
- (2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.
- (3) A consumer claim may be included in proceedings under this section if it is—
  - (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
  - (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.
- (4) The consumer claims included in proceedings under this section must all relate to the same infringement.
- (5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.
- (6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).
- (7) This subsection applies to goods or services which—
  - (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
  - (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.
- (8) A business includes—
  - (a) a professional practice;
  - (b) any other undertaking carried on for gain or reward;
  - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.

*Status: Point in time view as at 01/10/2009.*

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- (9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.
- (10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.]

#### Textual Amendments

**F126** S. 47B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 19, 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

### <sup>F127</sup> 48 Appeal tribunals.

#### Textual Amendments

**F127** S. 48 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 3, Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### [<sup>F128</sup> 49 Further appeals

- (1) An appeal lies to the appropriate court—
- (a) from a decision of the Tribunal as to the amount of a penalty under section 36;
  - (b) from a decision of the Tribunal as to the award of damages or other sum in respect of a claim made in proceedings under section 47A or included in proceedings under section 47B (other than a decision on costs or expenses) or as to the amount of any such damages or other sum; and
  - (c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.
- (2) An appeal under this section—
- (a) may be brought by a party to the proceedings before the Tribunal or by a person who has a sufficient interest in the matter; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- (3) In this section “the appropriate court” means the Court of Appeal or, in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session.]

#### Textual Amendments

**F128** S. 49 substituted (1.4.2003 for specified purposes, 18.7.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 4](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#)); [S.I. 2004/1866, art. 2](#)

#### Commencement Information

**I5** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 76(3); s. 49(3) in force at 1.4.1999 by [S.I. 1999/505, art. 2 Sch. 2](#); s. 49(1)(2) and (4) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

*Status: Point in time view as at 01/10/2009.*

*Changes to legislation: Competition Act 1998, Part I is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER V

### MISCELLANEOUS

#### *Vertical agreements and land agreements*

#### **50 Vertical agreements and land agreements.**

- (1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—
  - (a) vertical agreements, or
  - (b) land agreements,with such modifications as may be prescribed.
- (2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—
  - (a) vertical agreements, or land agreements, in general; or
  - (b) vertical agreements, or land agreements, of any prescribed description.
- (3) An order may empower the [<sup>F129</sup>OFT] to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.
- (4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.
- (5) In this section—
  - “land agreement” and “vertical agreement” have such meaning as may be prescribed; and
  - “prescribed” means prescribed by an order.

#### **Textual Amendments**

**F129** Word in s. 50 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(37\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *[<sup>F130</sup>OFT's] rules, guidance and fees*

#### **Textual Amendments**

**F130** Word in s. 51 cross-heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### **51 Rules.**

- (1) The [<sup>F131</sup>OFT] may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as [<sup>F131</sup>it] considers appropriate.

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- (2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the [F<sup>132</sup>OFT] powers under this section.
- (3) If the [F<sup>133</sup>OFT] is preparing rules under this section [F<sup>133</sup>it] must consult such persons as he considers appropriate.
- (4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (5) No rule made by the [F<sup>134</sup>OFT] is to come into operation until it has been approved by an order made by the Secretary of State.
- (6) The Secretary of State may approve any rule made by the [F<sup>134</sup>OFT]—
  - (a) in the form in which it is submitted; or
  - (b) subject to such modifications as he considers appropriate.
- (7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the [F<sup>134</sup>OFT] of the proposed modifications and take into account any comments made by the [F<sup>134</sup>OFT].
- (8) Subsections (5) to (7) apply also to any alteration of the rules made by the [F<sup>134</sup>OFT].
- (9) The Secretary of State may, after consulting the [F<sup>134</sup>OFT], by order vary or revoke any rules made under this section.
- (10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the [F<sup>135</sup>OFT] to exercise [F<sup>135</sup>its] powers under this section and make rules about that matter.

#### Textual Amendments

- F131** Words in s. 51(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F132** Word in s. 51(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)\(b\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F133** Words in s. 51(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)\(c\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F134** Word in s. 51(5)-(9) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)\(d\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F135** Words in s. 51(10) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)\(e\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 52 Advice and information.

- (1) As soon as is reasonably practicable after the passing of this Act, the Director must prepare and publish general advice and information about—
  - (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
  - (b) the enforcement of those prohibitions.
- [F<sup>136</sup>(1A) As soon as is reasonably practicable after 1st May 2004, the OFT must prepare and publish general advice and information about—
  - (a) the application of the prohibitions in Article 81(1) and Article 82; and
  - (b) the enforcement by it of those prohibitions.]



*Status: Point in time view as at 01/10/2009.*

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- (2) The [F137OFT] may at any time publish revised, or new, advice or information.
- (3) Advice and information published under this section must be prepared with a view to—
  - (a) explaining provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the [F137OFT] expects such provisions to operate.
- (4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the [F138OFT] may take into account in considering whether, and if so how, to exercise a power conferred on [F138it] by Chapter I, II or III.
- (5) Any advice or information published by the [F139OFT] under this section is to be published in such form and in such manner as [F139it] considers appropriate.
- (6) If the [F140OFT] is preparing any advice or information under this section [F140it] must consult such persons as he considers appropriate.
- (7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—
  - (a) the [F141OFT];
  - (b) the other regulators; and
  - (c) such other persons as he considers appropriate.

#### Textual Amendments

- F136** S. 52(1A) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 31(2)**
- F137** Word in s. 52(2)(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(39)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F138** Words in s. 52(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(39)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F139** Words in s. 52(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(39)(c)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F140** Words in s. 52(6) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(39)(d)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F141** Word in s. 52(8) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(39)(e)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

## 53 Fees.

- [F142(1)] The [F143OFT] may charge fees, of specified amounts, in connection with the exercise by [F143it] of specified functions under this Part.
- (2) Rules may, in particular, provide—
  - (a) for the amount of any fee to be calculated by reference to matters which may include—

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- (i) the turnover of any party to an agreement (determined in such manner as may be specified);
  - (ii) the turnover of a person whose conduct the [F143OFT] is to consider (determined in that way);
  - (b) for different amounts to be specified in connection with different functions;
  - (c) for the repayment by the [F143OFT] of the whole or part of a fee in specified circumstances;
  - (d) that an application or notice is not to be regarded as duly made or given unless the appropriate fee is paid.
- (3) In this section—
- (a) “rules” means rules made by the [F143OFT] under section 51; and
  - (b) “specified” means specified in rules.]

#### Textual Amendments

**F142** S. 53 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 32** (with reg. 6(2))

**F143** Words in s. 53 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(40)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

### *Regulators*

#### 54 Regulators.

- (1) In this Part “regulator” means [F144—
- [F145(a) the Office of Communications;]
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Director General of Electricity Supply for Northern Ireland;
  - [F146(d) the Water Services Regulation Authority;]
  - (e) the [F147Office of Rail Regulation];
  - (f) the Director General of Gas for Northern Ireland; and
  - (g) the Civil Aviation Authority.]
- (2) Parts II and III of Schedule 10 provide for functions of the [F148OFT] under this Part to be exercisable concurrently by regulators.
- (3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators’ competition functions.
- (4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part (“Part I functions”) which are exercisable concurrently by two or more competent persons as a result of [F149any enactment (including any subordinate legislation) whenever passed or made].
- (5) The regulations may, in particular, make provision—
- (a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;
  - (b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;

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- (c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;
  - (d) for Part I functions in a particular case to be exercised jointly—
    - (i) by the [<sup>F148</sup>OFT] and one or more regulators, or
    - (ii) by two or more regulators,and as to the procedure to be followed in such cases;
  - (e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;
  - (f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;
  - (g) for the person (“A”) exercising Part I functions in a particular case—
    - (i) to appoint another competent person (“B”) to exercise Part I functions on A’s behalf in relation to the case; or
    - (ii) to appoint officers of B (with B’s consent) to act as officers of A in relation to the case;
  - (h) for notification as to who is exercising Part I functions in respect of a particular case.
- (6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State or by such other person as may be prescribed.
- (7) “Competent person” means the [<sup>F148</sup>OFT] or any of the regulators.
- [<sup>F150</sup>(8) In this section, “subordinate legislation” has the same meaning as in section 21(1) of the [Interpretation Act 1978 \(c 30\)](#) and includes an instrument made under—
- (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation.]

#### Textual Amendments

- F144** Words in s. 54(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(41)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F145** S. 54(1)(a) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), ss. **371(5)(a)**, 411(2) (with Sch. 18); [S.I. 2003/1900](#), arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)
- F146** S. 54(1)(d) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 32(2)**; [S.I. 2005/2714](#), art. 4(f)
- F147** Words in s. 54 substituted (5.7.2004) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), s. 120(1), **Sch. 2 para. 19(p)**; [S.I. 2004/827](#), art. 4(g)
- F148** Word in s. 54(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(41)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F149** Words in s. 54(4) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 33(2)**
- F150** S. 54(8) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 33(3)**

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**Modifications etc. (not altering text)**

- C37** S. 54(5)-(7) applied by 1986 c. 46, s. 9D(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 204\(2\)](#), [279](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#))
- C38** S. 54(5)-(7) applied by [S.I. 2002/3150 \(N.I. 4\)](#), [art. 13D\(2\)](#) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\)](#), [arts. 1\(3\)](#), [3](#); [S.R. 2005/514](#), [art. 2](#))

**Commencement Information**

- I6** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 76(3); s. 54(2) in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), [art. 2](#); s. 54(3) in force for certain purposes at 11.1.1999 and s. 54(4)-(7) in force at the same date by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#); s. 54(3) in force for certain purposes at 1.4.1999 by [S.I. 1999/505](#), [art. 2](#), [Sch. 2](#); s. 54(1)(2) and (3) wholly in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

*Confidentiality and immunity from defamation*

<sup>F151</sup>**55 General restrictions on disclosure of information.**

.....

**Textual Amendments**

- F151** S. 56 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 247\(j\)](#), [279](#), [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 6](#))

**Modifications etc. (not altering text)**

- C39** S. 55 restricted (31.10.2003) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), [s. 115](#); [S.I. 2003/2681](#), [art. 2\(b\)](#)

<sup>F151</sup>**56 Director and Secretary of State to have regard to certain matters in relation to the disclosure of information.**

.....

**Textual Amendments**

- F151** S. 56 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 247\(j\)](#), [279](#), [Sch. 26](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 6](#))

**57 Defamation.**

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the [<sup>F152</sup>OFT] in the exercise of any of [<sup>F152</sup>its] functions under this Part.

*Status: Point in time view as at 01/10/2009.*

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#### Textual Amendments

**F152** Words in s. 57 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(42\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### Findings of fact by <sup>F153</sup>OFT]

#### Textual Amendments

**F153** Word in s. 58 cross-heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(43\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### 58 Findings of fact by <sup>F154</sup>OFT].

- (1) Unless the court directs otherwise <sup>F155</sup>or the <sup>F154</sup>OFT] has decided to take further action in accordance with section 16(2) or 24(2)], <sup>F156</sup>OFT's] finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—
- the time for bringing an appeal <sup>F157</sup>under section 46 or 47] in respect of the finding has expired and the relevant party has not brought such an appeal; or
  - the decision of <sup>F158</sup>the Tribunal] on such an appeal has confirmed the finding.
- (2) In this section—
- <sup>F159</sup>“an OFT’s finding” means a finding of fact made by the OFT in the course of conducting an investigation;]
- <sup>F160</sup>“Part 1 proceedings” means proceedings brought otherwise than by the OFT—
- in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; or
  - in respect of an alleged infringement of the prohibitions in Article 81(1) or Article 82;]

“relevant party” means—

    - in relation to the Chapter I prohibition <sup>F161</sup>or the prohibition in Article 81(1)], a party to the agreement which is alleged to have infringed the prohibition; and
    - in relation to the Chapter II prohibition <sup>F162</sup>or the prohibition in Article 82], the undertaking whose conduct is alleged to have infringed the prohibition.

(3) Rules of court may make provision in respect of assistance to be given by the <sup>F154</sup>OFT] to the court in Part I proceedings.

#### Textual Amendments

**F154** Word in s. 58 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(43\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

**F155** Words in s. 58(1) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 34\(2\)](#) (with reg. 6(2))

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- F156** Words in s. 58 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(43)(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F157** Words in s. 58(1)(a) inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 5(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F158** Words in s. 58(1)(b) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 5(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F159** Words in s. 58(2) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 34(3)(a)
- F160** Words in s. 58(2) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 34(3)(b)
- F161** Words in s. 58(2) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 34(3)(c)(i)
- F162** Words in s. 58(2) inserted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), Sch. 1 para. 34(3)(c)(ii)

### *F<sup>163</sup> Findings of infringements*

#### **Textual Amendments**

- F163** S. 58A and cross-heading inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 20(1)(2), 279 (with s. 20(2)); S.I. 2003/1397, art. 2(1), Sch.

#### **58A Findings of infringements**

- (1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of—
  - (a) the Chapter I prohibition;
  - (b) the Chapter II prohibition;
  - (c) the prohibition in Article 81(1) of the Treaty;
  - (d) the prohibition in Article 82 of the Treaty.
- (2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.
- (3) The decisions are—
  - (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed.
- (4) The periods mentioned in subsection (2) are—
  - (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46 or 47 <sup>F164</sup>...;
  - (b) in the case of a decision of the Tribunal mentioned in subsection (3)(c), the period during which a further appeal may be made under section 49 <sup>F165</sup>...;

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- (c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the [<sup>F166</sup>Supreme Court] from a decision on the further appeal;
- and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined.]

#### Textual Amendments

- F164** Words in s. 58A(4)(a) repealed (20.7.2007) by [The EC Competition Law \(Articles 84 and 85\) Enforcement \(Revocation\) Regulations 2007 \(S.I. 2007/1846\)](#), reg. 1, **Sch.**
- F165** Words in s. 58A(4)(b) repealed (20.7.2007) by [The EC Competition Law \(Articles 84 and 85\) Enforcement \(Revocation\) Regulations 2007 \(S.I. 2007/1846\)](#), reg. 1, **Sch.**
- F166** Words in s. 58A(4)(c) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 9 para. 65(4)**; S.I. 2009/1604, art. 2(d)

#### *Interpretation and governing principles*

### 59 [<sup>F167</sup>Interpretation of Part 1].

(1) In this Part—

- [<sup>F168</sup>"agreement" is to be read with section 2(5) and (6);]  
F169 ...
- [<sup>F170</sup>"Article 81(1)" means Article 81(1) of the Treaty;]  
[<sup>F170</sup>"Article 81(3)" means Article 81(3) of the Treaty;]  
[<sup>F171</sup>"Article 82" means Article 82 of the Treaty;]  
"block exemption" has the meaning given in section 6(4);  
"block exemption order" has the meaning given in section 6(2);  
"the Chapter I prohibition" has the meaning given in section 2(8);  
"the Chapter II prohibition" has the meaning given in section 18(4);  
"the Commission" (except in relation to the Competition Commission) means the European Commission;  
"the Council" means the Council of the European Union;  
"the court", except in sections 58[<sup>F172</sup>, 58A] and 60 and the expression "European Court", means—  
(a) in England and Wales, the High Court;  
(b) in Scotland, the Court of Session; and  
(c) in Northern Ireland, the High Court;  
F173 ...
- "document" includes information recorded in any form;  
"the EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;  
"the European Court" means the Court of Justice of the European Communities and includes the Court of First Instance;  
[<sup>F174</sup>"the EC Competition Regulation" means 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;]  
[<sup>F175</sup>"individual exemption" has the meaning given in section 4(2);]

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- “information” includes estimates and forecasts;
- “investigating officer” has the meaning given in section 27(1);
- [<sup>F176</sup>“investigation” means an investigation under section 25;]
- “Minister of the Crown” has the same meaning as in the Ministers of the <sup>M3</sup>Crown Act 1975;
- [<sup>F177</sup>“OFCOM” means the Office of Communications;]
- “officer”, in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;
- [<sup>F178</sup>“the OFT” means the Office of Fair Trading;]
- “parallel exemption” has the meaning given in section 10(3);
- “person”, in addition to the meaning given by the <sup>M4</sup>Interpretation Act 1978, includes any undertaking;
- [<sup>F179</sup>“premises” includes any land or means of transport;]
- “prescribed” means prescribed by regulations made by the Secretary of State;
- “regulator” has the meaning given by section 54;
- “section 11 exemption” has the meaning given in section 11(3); and
- “the Treaty” means the treaty establishing the European Community.
- [<sup>F180</sup>“the Tribunal” means the Competition Appeal Tribunal;]
- “Tribunal rules” means rules under section 15 of the Enterprise Act 2002.]
- [<sup>F181</sup>“working day” means a day which is not—
- (a) Saturday,
  - (b) Sunday,
  - (c) Christmas Day,
  - (d) Good Friday, or
  - (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.]
- (2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.
- (3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.
- (4) Any power conferred on the [<sup>F182</sup>OFT] by this Part to require information includes power to require any document which [<sup>F182</sup>it] believes may contain that information.

#### Textual Amendments

- F167** Words in s. 59 sidenote substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 35\(3\)](#)
- F168** Words in s. 59(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 35\(2\)\(a\)](#)
- F169** Words in s. 59(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 6\(a\)](#), [Sch. 26](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))



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- F170** Words in s. 59(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(b)**
- F171** Words in s. 59(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(c)**
- F172** Word in s. 59(1) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 20(3)**, 279; S.I. 2003/1397, art. 2(1), Sch.
- F173** Words in s. 59(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 38(44)(a), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F174** Words in s. 59(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(d)**
- F175** Words in s. 59(1) cease to have effect (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(e)** (with reg. 6(2))
- F176** Words in s. 59(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(f)**
- F177** Words in s. 59(1) inserted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(7)**, 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F178** Words in s. 59(1) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(44)(a)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F179** Words in s. 59(1) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(g)**
- F180** Words in s. 59(1) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 6(b), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F181** Words in s. 59(1) inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 35(2)(h)**
- F182** Words in s. 59(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(44)(b)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Commencement Information

- I7** S. 59 wholly in force at 11.1.1999; s. 59 not in force at Royal Assent see s. 76(3); s. 59 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), **art. 2**; s. 59 in force in so far as not already in force by [S.I. 1998/3166](#), art. 2, **Sch.**

#### Marginal Citations

- M3** 1975 c. 26.  
**M4** 1978 c. 30.

## 60 Principles to be applied in determining questions.

- (1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community.
- (2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—

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- (a) the principles applied, and decision reached, by the court in determining that question; and
  - (b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in Community law.
- (3) The court must, in addition, have regard to any relevant decision or statement of the Commission.
- (4) Subsections (2) and (3) also apply to—
- (a) the [<sup>F183</sup>OFT]; and
  - (b) any person acting on behalf of the [<sup>F183</sup>OFT], in connection with any matter arising under this Part.
- (5) In subsections (2) and (3), “court” means any court or tribunal.
- (6) In subsections (2)(b) and (3), “decision” includes a decision as to—
- (a) the interpretation of any provision of Community law;
  - (b) the civil liability of an undertaking for harm caused by its infringement of Community law.

#### **Textual Amendments**

**F183** Word in s. 60 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(45\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### **Modifications etc. (not altering text)**

**C40** S. 60 applied by 1986 c. 46, s. 9A(11) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))

**C41** S. 60 applied by [S.I. 2002/3150 \(N.I. 4\), art. 13A\(11\)](#) (as inserted (19.12.2005) by [The Company Directors Disqualification \(Amendment\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1454\), arts. 1\(3\), 3](#); [S.R. 2005/514, art. 2](#))

**Status:**

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**Changes to legislation:**

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