



# Competition Act 1998

## 1998 CHAPTER 41

### PART I

#### COMPETITION

#### 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**

- I1** 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.](#)
- I2** S. 1(a) in force at 10.3.2013 by [S.I. 2013/284](#), [art. 2\(a\)](#)

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## *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;
  - (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)**

- |           |   |
|-----------|---|
| <b>C1</b> | S. 2(1) excluded (18.6.2001) by <a href="#">2000 c. 8, ss. 164(1)(2)(4)</a> ; S.I. 2001/1820, art. 2, <a href="#">Sch.</a>  |
|           | S. 2(1) excluded (3.9.2001) by <a href="#">2000 c. 8, s. 311(9)</a> ; S.I. 2001/2632, art. 2(2), <a href="#">Sch. Pt. 2</a>   |
| <b>C2</b> | S. 2(1) excluded (28.3.2012) by <a href="#">The Competition Act 1998 (Public Policy Exclusion) Order 2012 (S.I. 2012/710)</a> , arts. 1, 4  |
| <b>C3</b> | S. 2(1) excluded (E.) (28.3.2020) by <a href="#">The Competition Act 1998 (Health Services for Patients in England) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/368)</a> , arts. 1(1), 4 (with art. 1(2)) |
| <b>C4</b> | S. 2(1) excluded (28.3.2020) by <a href="#">The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/369)</a> , arts. 1, 6  |
| <b>C5</b> | S. 2(1) excluded (28.3.2020) by <a href="#">The Competition Act 1998 (Groceries) (Coronavirus) (Public Policy Exclusion) Order 2020 (S.I. 2020/369)</a> , arts. 1, 5  |

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- C6** S. 2(1) excluded (28.3.2020) by [The Competition Act 1998 \(Solent Maritime Crossings\) \(Coronavirus\) \(Public Policy Exclusion\) Order 2020 \(S.I. 2020/370\)](#), arts. 1, 4
- C7** S. 2(1) excluded (21.4.2020) by [The Competition Act 1998 \(Health Services for Patients in Wales\) \(Coronavirus\) \(Public Policy Exclusion\) Order 2020 \(S.I. 2020/435\)](#), arts. 1(1), 4 (with art. 1(2))
- C8** S. 2(1) excluded (temp.) (2.5.2020) by [The Competition Act 1998 \(Dairy Produce\) \(Coronavirus\) \(Public Policy Exclusion\) Order 2020 \(S.I. 2020/481\)](#), arts. 1, 5, 6 (with art. 10)
- C9** 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
    - (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.](#))

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- 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

- I3** 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.
- (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 [<sup>F5</sup>OFT] may extend the period for which an exemption has effect; but, if the rules so provide, [<sup>F5</sup>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.)

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## 5 Cancellation etc. of individual exemptions.

- [<sup>F6</sup>(1) If the [<sup>F7</sup>OFT] has reasonable grounds for believing that there has been a material change of circumstance since [<sup>F7</sup>it] granted an individual exemption, [<sup>F7</sup>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 [<sup>F7</sup>OFT] has a reasonable suspicion that the information on which [<sup>F7</sup>it] based [<sup>F7</sup>its] decision to grant an individual exemption was incomplete, false or misleading in a material particular, [<sup>F7</sup>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 [<sup>F7</sup>OFT], by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the [<sup>F7</sup>OFT] 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 [<sup>F7</sup>OFT] may act under subsection (1), (2) or (4) on [<sup>F7</sup>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.**)

## 6 Block exemptions.

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the [<sup>F8</sup>CMA], likely to be [<sup>F9</sup>exempt agreements], the [<sup>F8</sup>CMA] 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.

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- (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 [F8CMA] may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the [F8CMA] considers that a particular agreement is not [F10]an exempt agreement], [F11]it] 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(1)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 2](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with 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\(4\)](#)

## 7 Block exemptions: opposition.

- [F13(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 [F14OFT] 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 [F14OFT]—
- (a) is opposed to its being so treated; and
  - (b) gives notice in writing to the party concerned of [F14]its] opposition before the end of that period.
- (3) If the [F14OFT] gives notice of [F14]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.

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- (4) In this section “notice period” means such period as may be specified with a view to giving the [F14OFT] 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 [F15CMA] must—
- publish details of [F16its] proposed recommendation in such a way as [F16it] thinks most suitable for bringing it to the attention of those likely to be affected; and
  - consider any representations about it which are made to [F16it].
- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the [F15CMA] of the proposed modifications and take into account any comments made by the [F15CMA] .
- (3) If, in the opinion of the [F15CMA] , it is appropriate to vary or revoke a block exemption order [F17it] 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 [F16its] 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—
- inform the [F18CMA] of the proposed variation or revocation; and
  - take into account any comments made by the [F18CMA] .
- (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** Word in s. 8(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 3** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with 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.)
- F18** Word in s. 8(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 3** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

## 9 [F19Exempt agreements].

- [F20(1)] [F21An agreement is exempt from the Chapter I prohibition if it]—

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- (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>[F22]</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>[F23]</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

- F19** 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)**
- F20** 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)**
- F21** 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)**
- F22** 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)**
- F23** 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 <sup>[F24]</sup>the European Union] prohibition—
  - (a) by virtue of a Regulation, <sup>[F25]</sup>or
  - (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 <sup>[F24]</sup>the European Union] 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 <sup>[F24]</sup>the European Union] 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 <sup>[F24]</sup>the European Union] prohibition ceases to have effect; or



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- (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 [F26CMA] 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 [F27CMA] has the effect of cancelling the exemption.
- (8) In exercising [F28:its] powers under this section, the [F29CMA] may require any person who is a party to the agreement in question to give [F28:it] such information as [F28:it] may require.
- (9) For the purpose of this section references to an agreement being exempt from [F24the European Union] prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation [F30other than the EC Competition Regulation] or a decision by the Commission.
- (10) In this section—
- “[F24the European Union] prohibition” means the prohibition contained in—
    - (a) [F31Article 101(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.
- (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 [F24the European Union] prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.

#### Textual Amendments

- F24** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))
- F25** 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)
- F26** Word in s. 10(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 4** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F27** Word in s. 10(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 4** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F28** 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.)

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- F29** Word in s. 10(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 4** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F30** 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)**
- F31** Words in s. 10(10) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

## 11 Exemption for certain other agreements.

- (1) The fact that a ruling may be given by virtue of [<sup>F32</sup>Article 104] of the Treaty on the question whether or not agreements of a particular kind are prohibited by [<sup>F32</sup>Article 101(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

- F32** Words in s. 11(1) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

## *Notification*

## 12 Requests for [<sup>F33</sup>OFT] to examine agreements.

- <sup>F34</sup>(1) Sections 13 and 14 provide for an agreement to be examined by the [<sup>F33</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>F33</sup>OFT], in considering such an application.
- (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 [<sup>F33</sup>OFT]—
  - (a) has given a direction withdrawing an exclusion; or
  - (b) is considering whether to give such a direction.]

### Textual Amendments

- F33** 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.)
- F34** 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))

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### Commencement Information

- I4** 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.

- [<sup>F34</sup>(1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [<sup>F35</sup>OFT] of the agreement; and
  - (b) apply to [<sup>F35</sup>the OFT] for guidance.
- (2) On an application under this section, the [<sup>F35</sup>OFT] may give the applicant guidance as to whether or not, in [<sup>F35</sup>its] view, the agreement is likely to infringe the Chapter I prohibition.
- (3) If the [<sup>F35</sup>OFT] considers that the agreement is likely to infringe the prohibition if it is not exempt, [<sup>F35</sup>its] 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 [<sup>F35</sup>it] 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 [<sup>F35</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>F35</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

- F34** 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. 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)

- C10** S. 13 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 4

## 14 Notification for a decision.

- [<sup>F34</sup>(1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [<sup>F36</sup>OFT] of the agreement; and
  - (b) apply to [<sup>F36</sup>the OFT] for a decision.

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- (2) On an application under this section, the [F36OFT] 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 [F36OFT] 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 [F36OFT] 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 [F36OFT] 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

- F34** 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))
- F36** 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)

- C11** S. 14 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), [art. 5](#)

## 15 Effect of guidance.

- [F34(1) This section applies to an agreement if the [F37OFT] has determined an application under section 13 by giving guidance that—
- (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) [F37:it] would be likely to grant the agreement an individual exemption if asked to do so.
- (2) The [F37OFT] is to take no further action under this Part with respect to an agreement to which this section applies, unless—
- (a) [F37:it] has reasonable grounds for believing that there has been a material change of circumstance since [F37:it] gave [F37:its] guidance;
  - (b) [F37:it] has a reasonable suspicion that the information on which [F37:it] based [F37:its] guidance was incomplete, false or misleading in a material particular;
  - (c) one of the parties to the agreement applies to [F37:it] for a decision under section 14 with respect to the agreement; or

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- (d) a complaint about the agreement has been made to [F37: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 [F37:OFT] may remove the immunity given by subsection (3) if—
- (a) [F37:it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [F37:it] considers it likely that the agreement will infringe the prohibition; and
  - (c) [F37:it] gives notice in writing to the party on whose application the guidance was given that [F37:it] is removing the immunity as from the date specified in [F37:its] notice.
- (5) If the [F37:OFT] has a reasonable suspicion that information—
- (a) on which [F37:it] based [F37:its] guidance, and
  - (b) which was provided to [F37: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

- F34** 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))
- F37** 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)

- C12** S. 15 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), **art. 6**

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

- [F34(1) This section applies to an agreement if the [F38:OFT] has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The [F38:OFT] is to take no further action under this Part with respect to the agreement unless—
- (a) [F38:it] has reasonable grounds for believing that there has been a material change of circumstance since [F38:it] gave [F38:its] decision; or
  - (b) [F38:it] has a reasonable suspicion that the information on which [F38:it] based [F38: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 [F38:OFT] may remove the immunity given by subsection (3) if—
- (a) [F38:it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [F38:it] considers that it is likely that the agreement will infringe the prohibition; and

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- (c) [F38:it] gives notice in writing to the party on whose application the decision was made that [F38:it] is removing the immunity as from the date specified in [F38:its] notice.
- (5) If the [F38:OFT] has a reasonable suspicion that information—
- (a) on which [F38:it] based [F38:its] decision, and
  - (b) which was provided to [F38: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

- F34** 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))
- F38** 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)

- C13** S. 16 applied (with modifications) (1.3.2000) by [S.I. 2000/263](#), **art. 7**

**Status:**

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**Changes to legislation:**

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