



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER III

INVESTIGATION AND ENFORCEMENT

Investigations

[^{F1}25 Power of [^{F2}CMA] to investigate

- (1) In any of the following cases, the [^{F3}CMA] 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 [^{F4}the European Union].
- (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 [^{F5}Article 102] has been infringed.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (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 [^{F4}the European Union].
- (8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the [^{F6}CMA] —
- (a) considers that the agreement is exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption; and
 - (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 [^{F6}CMA] —
- (a) considers that the agreement is an agreement to which the prohibition in [^{F7}Article 101(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 [^{F6}CMA] 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 [^{F6}CMA] considers that, at the time in question, the agreement was an agreement to which the prohibition in [^{F8}Article 101(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

- F1** 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**
- F2** Word in s. 25 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 5(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Word in s. 25(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 5(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** 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))
- F5** Words in s. 25(5) 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))

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- F6** Word in s. 25(8)-(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 5\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 25(9)(a) 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))
- F8** Words in s. 25(11) 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))

[^{F9}25A Power of CMA to publish notice of investigation

- (1) Where the CMA decides to conduct an investigation it may publish a notice which may, in particular—
- state its decision to do so;
 - indicate which of subsections (2) to (7) of section 25 the investigation falls under;
 - summarise the matter being investigated;
 - identify any undertaking whose activities are being investigated as part of the investigation;
 - identify the market which is or was affected by the matter being investigated.
- (2) Section 57 does not apply to a notice under subsection (1) to the extent that it includes information other than information mentioned in that subsection.
- (3) Subsection (4) applies if—
- the CMA has published a notice under subsection (1) which identifies an undertaking whose activities are being investigated, and
 - the CMA subsequently decides (without making a decision within the meaning given by section 31(2)) to terminate the investigation of the activities of the undertaking so identified.
- (4) The CMA must publish a notice stating that the activities of the undertaking in question are no longer being investigated.]

Textual Amendments

- F9** S. 25A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 42\(2\)](#), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

26 [^{F10}Investigations: powers to require documents and information]

- (1) For the purposes of an investigation [^{F11}under section 25], the [^{F12}CMA] may require any person to produce to [^{F13}it] a specified document, or to provide [^{F13}it] with specified information, which [^{F13}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—
- the subject matter and purpose of the investigation; and
 - the nature of the offences created by sections [^{F14}43 and] 44.
- (4) In subsection (1) “specified” means—
- specified, or described, in the notice; or

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (b) falling within a category which is specified, or described, in the notice.
- (5) The [^{F15}CMA] 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;
 - (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

- F10** S. 26 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 39\(3\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F11** 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\(2\)\)](#)
- F12** Word in s. 26(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 6 \(with s. 28\); S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)
- F13** 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.\)](#)
- F14** Words in s. 26(3)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 15 para. 9; S.I. 2014/416, art. 2\(1\)\(f\) \(with Sch.\)](#)
- F15** Word in s. 26(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 6 \(with s. 28\); S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)

Modifications etc. (not altering text)

- C1** 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\)](#)
- C2** 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.](#))
- C3** 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\)](#)

[^{F16}26A Investigations: power to ask questions

- (1) For the purposes of an investigation, the CMA may give notice to an individual who has a connection with a relevant undertaking requiring the individual to answer questions with respect to any matter relevant to the investigation—
 - (a) at a place specified in the notice, and
 - (b) either at a time so specified or on receipt of the notice.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (2) The CMA must give a copy of the notice under subsection (1) to each relevant undertaking with which the individual has a current connection at the time the notice is given to the individual.
- (3) The CMA must take such steps as are reasonable in all the circumstances to comply with the requirement under subsection (2) before the time at which the individual is required to answer questions.
- (4) Where the CMA does not comply with the requirement under subsection (2) before the time mentioned in subsection (3), it must comply with that requirement as soon as practicable after that time.
- (5) A notice under subsection (1) must be in writing and must indicate—
 - (a) the subject matter and purpose of the investigation, and
 - (b) the nature of the offence created by section 44.
- (6) For the purposes of this section—
 - (a) an individual has a connection with an undertaking if he or she is or was—
 - (i) concerned in the management or control of the undertaking, or
 - (ii) employed by, or otherwise working for, the undertaking, and
 - (b) an individual has a current connection with an undertaking if, at the time in question, he or she is so concerned, is so employed or is so otherwise working.
- (7) In this section, a “relevant undertaking” means an undertaking whose activities are being investigated as part of the investigation in question.]

Textual Amendments

F16 S. 26A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 39\(2\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)

27 [F17]Power to enter business premises without a warrant]

- (1) Any officer of the [F18CMA] who is authorised in writing by the [F18CMA] to do so (“an investigating officer”) may enter [F19any business premises] in connection with an investigation [F20under 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 [F21CMA] has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which [F22:it] is investigating [F23section 25]; or
 - (ii) an undertaking the conduct of which [F22:it] is investigating under [F24section 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.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (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—
- (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 ^[F25]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 ^[F26]or from which it can readily be produced in a visible and legible form].
 - ^[F27](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.]
- ^[F28](6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.]

Textual Amendments

- F17** 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)**
- F18** Word in s. 27(1) substituted (1.4.2014) by **Enterprise and Regulatory Reform Act 2013** (c. 24), s. 103(3), **Sch. 5 para. 7** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F19** 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)**
- F20** 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))
- F21** Word in s. 27(3) substituted (1.4.2014) by **Enterprise and Regulatory Reform Act 2013** (c. 24), s. 103(3), **Sch. 5 para. 7** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F22** 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.)
- F23** 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)**
- F24** 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)**
- F25** 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)
- F26** 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)
- F27** 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)**

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

F28 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)

- C2** 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.](#))
- C3** 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)
- C4** 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 [^{F29}**Power to enter business premises under a warrant**].

- (1) [^{F30}On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on [^{F31}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 [^{F32}any business premises] documents which the [^{F33}CMA] 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 [^{F34}CMA] , and any other of [^{F35}the [^{F36}“CMA’s”] officers whom the [^{F34}CMA]] 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;

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (f) to require any information which is ^{F37}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 ^{F38}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), ^{F39}the court or (as the case may be) the Tribunal] 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.
- ^{F40}(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.
- ^{F41}(7A) An application for a warrant under this section must be made—
- (a) in the case of an application to the court, in accordance with rules of court;
 - (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]
- ^{F42}(8) In this section “business premises” has the same meaning as in section 27.]

Textual Amendments

- F29** 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)**
- F30** Words in s. 28(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 2(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F31** 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)**
- F32** 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)**
- F33** Word in s. 28(1)(b)(i) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 8(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F34** Word in s. 28(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 8(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F35** 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.)

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- F36** Word in s. 28(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 8(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** 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)
- F38** 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)
- F39** Words in s. 28(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 2(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F40** 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.
- F41** S. 28(7A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 13 para. 2(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F42** 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)

- C2** 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.)
- C3** 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)
- C5** 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**)
- C6** 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**
- C7** 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)
- C8** S. 28(2)(f) modified (prosp.) by 2001 c. 16, **ss. 63(2)(h)**, 138(2)
- C9** 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)
- C10** S. 28(7) applied (prosp.) by 2001 c. 16, **ss. 57(1)(n)(2)(4)**, 138(2)
- C11** 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)

[^{F43}28A Power to enter domestic premises under a warrant

- (1) [^{F44}On an application made to it by the CMA, the court or the Tribunal may issue a warrant if it 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 [^{F45}CMA] 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.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (2) A warrant under this section shall authorise a named officer of the [^{F45}CMA], and any other of its officers whom the [^{F45}CMA] 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
 - (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), [^{F46}the court or (as the case may be) the Tribunal] 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.
- [An application for a warrant under this section must be made—
- ^{F47}(8A) (a) in the case of an application to the court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules.]

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (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

- F43** 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**
- F44** Words in s. 28A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F45** Word in s. 28A(1)(b)(i)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 9** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F46** Words in s. 28A(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F47** S. 28A(8A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 13 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C3** 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 [^{F48}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 [^{F49}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
 - (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.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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

- F48** 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)**
- F49** 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)

- C2** 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.)
- C3** 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)
- C12** 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)

- C2** 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.)
- C3** 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)
- C13** 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**)

[^{F50}30A Use of statements in prosecution

- [A statement made by a person in response to a requirement imposed by virtue of ^{F51}(1)] any of sections [^{F52}26 and 27 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—

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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) 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.]
- [^{F53}(2) A statement by an individual in response to a requirement imposed by virtue of section 26A (a “section 26A statement”) may only be used in evidence against the individual—
- (a) on a prosecution for an offence under section 44, or
 - (b) on a prosecution for some other offence in a case falling within subsection (3).
- (3) A prosecution falls within this subsection if, in the proceedings—
- (a) in giving evidence, the individual makes a statement inconsistent with the section 26A statement, and
 - (b) evidence relating to the section 26A statement is adduced, or a question relating to it is asked, by or on behalf of the individual.
- (4) A section 26A statement may not be used in evidence against an undertaking with which the individual who gave the statement has a connection on a prosecution for an offence unless the prosecution is for an offence under section 44.
- (5) For the purposes of subsection (4), an individual has a connection with an undertaking if he or she is or was—
- (a) concerned in the management or control of the undertaking, or
 - (b) employed by, or otherwise working for, the undertaking.]

Textual Amendments

- F50** S. 30A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 198, 279; S.I. 2003/1397, art. 2(1), Sch.
- F51** S. 30A renumbered as s. 30A(1) (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 39(5), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F52** Words in s. 30A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 39(6), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F53** S. 30A(2)-(5) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 39(7), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

[^{F54}31 Decisions following an investigation.

- (1) If as a result of an investigation the [^{F55}CMA] proposes to make a decision, the [^{F55}CMA] 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.]
- [^{F54}(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the [^{F55}CMA] —
- (a) that the Chapter I prohibition has been infringed;
 - (b) that the Chapter II prohibition has been infringed;
 - (c) that the prohibition in [^{F56}Article 101(1)] has been infringed; or
 - (d) that the prohibition in [^{F57}Article 102] has been infringed.]

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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

- F54** 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**
- F55** Word in s. 31(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 10** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F56** Words in s. 31(2)(c) 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))
- F57** Words in s. 31(2)(d) 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))

[^{F58}31A Commitments

- (1) Subsection (2) applies in a case where the [^{F59}CMA] 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 [^{F59}CMA] 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.
- (3) At any time when commitments are in force the [^{F59}CMA] 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 [^{F59}CMA] 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

- F58** 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**
- F59** Words in s. 31A(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 11** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[^{F58}31B Effect of commitments under section 31A

- (1) Subsection (2) applies if the [^{F60}CMA] has accepted commitments under section 31A (and has not released them).

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (2) In such a case, the [F60CMA] 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 [F60CMA] 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 [F60CMA] 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 [F60CMA] makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.]

Textual Amendments

F58 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**

F60 Words in ss. 31B(1)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 12** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[F58] 31C Review of commitments

- (1) Where the [F61CMA] 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 [F61CMA] must—
- (a) give any report prepared by it under subsection (1) to the Secretary of State; and
 - (b) publish the report.]

Textual Amendments

F58 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**

F61 Word in s. 31C(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 13** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

[^{F58}31D Guidance

- (1) The [^{F62}CMA] must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.
- (2) The [^{F62}CMA] may at any time alter the guidance.
- (3) If the guidance is altered, the [^{F62}CMA] 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 [^{F63}CMA] may, after consulting the Secretary of State, choose how it publishes its guidance.
- (6) If the [^{F63}CMA] 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 [^{F64}CMA] must have regard to the guidance for the time being in force under this section.]

Textual Amendments

- F58** 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**
- F62** Word in s. 31D(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 14** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F63** Word in s. 31D(5)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 14** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F64** Word in s. 31D(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 14** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[^{F58}31E Enforcement of commitments

- (1) If a person from whom the [^{F65}CMA] has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the [^{F65}CMA] 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”.]

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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

- F58** 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](#)
- F65** Word in s. 31E(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 15](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[^{F66}31F Power for Secretary of State to impose time-limits on investigations etc.

- (1) The Secretary of State may by order impose time-limits in relation to—
- the conduct by the CMA of investigations or investigations of a description specified in the order;
 - the making by the CMA of decisions (within the meaning given by section 31(2)) as a result of investigations or investigations of such a description.
- (2) Before making an order under subsection (1), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.]

Textual Amendments

- F66** S. 31F inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 45](#), 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

Enforcement

32 Directions in relation to agreements.

- (1) If the [^{F67}CMA] has made a decision that an agreement infringes the Chapter I prohibition [^{F68}or that it infringes the prohibition in][^{F69}Article 101(1)], [^{F70}it] may give to such person or persons as [^{F70}it] considers appropriate such directions as [^{F70}it] considers appropriate to bring the infringement to an end.
- (2) [^{F71}Subsection (1) applies whether the [^{F72}OFT's] decision is made on [^{F72}its] own initiative or on an application made to [^{F72}it] under this Part.]
- (3) A direction under this section may, in particular, include provision—
- requiring the parties to the agreement to modify the agreement; or
 - requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

Textual Amendments

- F67** Word in s. 32(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 16](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F68** 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\(2\)](#)

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- F69** Words in s. 32(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))
- F70** 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.)
- F71** 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))
- F72** 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 [^{F73}CMA] has made a decision that conduct infringes the Chapter II prohibition [^{F74}or that it infringes the prohibition in][^{F75}Article 102], [^{F76}it] may give to such person or persons as [^{F76}it] considers appropriate such directions as [^{F76}it] considers appropriate to bring the infringement to an end.
- (2) [^{F77}Subsection (1) applies whether the [^{F78}OFT's] decision is made on [^{F78}its] own initiative or on an application made to [^{F78}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

- F73** Word in s. 33(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 17** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)
- F74** 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)**
- F75** Words in s. 33(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))
- F76** 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.)
- F77** 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))
- F78** 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 [^{F79}CMA] 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—

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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 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

F79 Word in s. 34(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 18](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

35 Interim measures.

- [^{F80}(1) Subject to subsections (8) and (9), this section applies if the [^{F81}CMA] has begun an investigation under section 25 and not completed it (but only applies so long as the [^{F81}CMA] has power under section 25 to conduct that investigation).]
- (2) If the [^{F81}CMA] considers that it is necessary for [^{F82}it] to act under this section as a matter of urgency for the purpose—
- (a) of preventing [^{F83}significant damage] to a particular person or category of person, or
 - (b) of protecting the public interest,
- [^{F82}it] may give such directions as [^{F82}it] considers appropriate for that purpose.
- (3) Before giving a direction under this section, the [^{F81}CMA] must—
- (a) give written notice to the person (or persons) to whom [^{F82}it] proposes to give the direction; and
 - (b) 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 [^{F81}CMA] is proposing to give and [^{F82}its] reasons for wishing to give it.
- [^{F84}(5) A direction given under this section may if the circumstances permit be replaced by—
- (a) a direction under section 32 or (as appropriate) section 33, or
 - (b) commitments accepted under section 31A,
- but, subject to that, has effect while this section applies.]
- (6) In the [^{F85}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 [^{F86}cases mentioned in section 25(4) and (5)], sections 33(3) and 34 also apply to directions given under this section.
- [^{F87}(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 [^{F88}CMA] 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—
- (a) may affect trade within the United Kingdom, and

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (b) 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 [F88CMA] 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 an agreement to which the prohibition in [F89 Article 101(1)] is inapplicable because the agreement satisfies the conditions in [F89 Article 101(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 [F4 the European Union].

Textual Amendments

- F4** 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))
- F80** 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)**
- F81** Words in s. 35(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 19** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F82** 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.)
- F83** Words in s. 35(2)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 43, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F84** 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)**
- F85** 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)**
- F86** 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)**
- F87** 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)**
- F88** Word in s. 35(8)(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 19** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F89** Words in s. 35(9) 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))

36 [F90 Penalties].

- (1) On making a decision that an agreement has infringed the Chapter I prohibition [F91 or that it has infringed the prohibition in [F92 Article 101(1)], the [F93 CMA] may require an undertaking which is a party to the agreement to pay the [F93 CMA] a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition [F94 or that it has infringed the prohibition in [F95 Article 102], the [F93 CMA] may require the undertaking concerned to pay the [F93 CMA] a penalty in respect of the infringement.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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 [F93CMA] may impose a penalty on an undertaking under subsection (1) or (2) only if [F96the [F93CMA]] 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 [F97in relation to a decision that an agreement has infringed the Chapter I prohibition] if the [F93CMA] 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 [F98in relation to a decision that conduct has infringed the Chapter II prohibition] if the [F93CMA] 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.
 - (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.
- [F99(7A) In fixing a penalty under this section the CMA must have regard to—
- (a) the seriousness of the infringement concerned, and
 - (b) the desirability of deterring both the undertaking on whom the penalty is imposed and others from—
 - (i) entering into agreements which infringe the Chapter 1 prohibition or the prohibition in Article 81(1), or
 - (ii) engaging in conduct which infringes the Chapter 2 prohibition or the prohibition in Article 82.]
- (8) No penalty fixed by the [F100CMA] 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 [F100CMA] under this section are to be paid into the Consolidated Fund.

Textual Amendments

- F90** 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)**
- F91** 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)**
- F92** Words in s. 36(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))
- F93** Word in s. 36(1)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 20** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F94** 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)**
- F95** Words in s. 36(2) 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))
- F96** Words in s. 36(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(28)** (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.)

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- F97** 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)**
- F98** 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)**
- F99** S. 36(7A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 44(2)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F100** Word in s. 36(8)(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 20** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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 [F101CMA] may recover from the undertaking, as a civil debt due to the [F101CMA], 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

- F101** Word in s. 37(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 21** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

38 The appropriate level of a penalty.

- (1) The [F102CMA] must prepare and publish guidance as to the appropriate amount of any penalty under this Part [F103 in respect of an infringement of the Chapter 1 prohibition, the Chapter 2 prohibition, the prohibition in Article 81(1) or the prohibition in Article 82].
- [F104(1A) The guidance must include provision about the circumstances in which, in determining [F105 such a penalty], the [F102CMA] may take into account effects in another Member State of the agreement or conduct concerned.]
- (2) The [F102CMA] may at any time alter the guidance.
- (3) If the guidance is altered, the [F102CMA] 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 [F106CMA] may, after consulting the Secretary of State, choose how [F107it] publishes [F107its] guidance.
- (6) If the [F106CMA] is preparing or altering guidance under this section [F107it] must consult such persons as [F107it] 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.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (8) When setting the amount of a penalty under this Part [^{F108}in respect of an infringement of a kind mentioned in subsection (1)], the [^{F109}CMA][^{F110}and the Tribunal] 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 [^{F109}CMA], [^{F111}the 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;
 - [^{F112}(d) the Supreme Court.]

Textual Amendments

- F102** Word in s. 38(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 22](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F103** Words in s. 38(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(4\)](#), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F104** 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\(2\)](#)
- F105** Words in s. 38(1A) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(5\)](#), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F106** Word in s. 38(5)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 22](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F107** 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.](#))
- F108** Words in s. 38(8) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(6\)](#), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F109** Word in s. 38(8)(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 22](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F110** Words in s. 38(8) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 44\(3\)](#), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F111** Words in s. 38(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 10](#); S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F112** 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

- II** 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.](#)

39 [^{F113}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.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (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) [F114so far as that provision relates to decisions about infringement of the Chapter I prohibition]; but the [F115CMA] may withdraw that immunity under subsection (4).
- (4) If the [F115CMA] has investigated a small agreement, [F116it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [F116its] investigation, [F116it] considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The [F115CMA] must give each of the parties in respect of which immunity is withdrawn written notice of [F116its] 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 [F117CMA] 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

- F113** 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)**
- F114** 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)**
- F115** Word in s. 39(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 23** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F116** 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.)
- F117** Word in s. 39(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 23** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with 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—

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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 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)^[F118], so far as that provision relates to decisions about infringement of the Chapter II prohibition,] if ^[F119]its] conduct is conduct of minor significance; but the ^[F120]CMA] may withdraw that immunity under subsection (4).
- (4) If the ^[F120]CMA] has investigated conduct of minor significance, ^[F121]it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of ^[F121]its] investigation, ^[F121]it] considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The ^[F120]CMA] must give the person, or persons, whose immunity has been withdrawn written notice of ^[F119]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 ^[F122]CMA] 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

- F118** 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)**
- F119** 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.**)
- F120** Word in s. 40(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 24** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with **Sch.**)
- F121** 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.**)
- F122** Word in s. 40(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 24** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with **Sch.**)

^[F123]Civil sanctions

Textual Amendments

- F123** Ss. 40A, 40B and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 40(2)**, 103(1)(i)(3); [S.I. 2014/416](#), art. 2(1)(b) (with **Sch.**)

40A Penalties: failure to comply with requirements

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 26, 26A, 27, 28 or 28A, it may impose a penalty of such amount as it considers appropriate.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (2) The amount may be—
 - (a) a fixed amount,
 - (b) an amount calculated by reference to a daily rate, or
 - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) A penalty imposed under subsection (1) must not—
 - (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (4) The fixed amount specified for the purposes of subsection (3)(a) or (c) may not exceed £30,000.
- (5) The amount per day specified for the purposes of subsection (3)(b) or (c) may not exceed £15,000.
- (6) In imposing a penalty by reference to a daily rate—
 - (a) no account is to be taken of any days before the service of the notice under section 112 of the Enterprise Act 2002 (as applied by subsection (9)) on the person concerned, and
 - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (7).
- (7) The days are—
 - (a) the day on which the requirement concerned is satisfied;
 - (b) the day on which the CMA makes a decision (within the meaning given by section 31(2)) or terminates the investigation in question without making such a decision;
 - (c) if the Secretary of State has made an order under section 31F(1)(b) imposing a time-limit on the making of such a decision, the latest day on which such a decision may be made as a result of the investigation in question.
- (8) Before making an order under subsection (3), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.
- (9) Sections 112 to 115 of the Enterprise Act 2002 (supplementary provisions about penalties) apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty imposed under section 110(1) of that Act.

40B Statement of policy on penalties

- (1) The CMA must prepare and publish a statement of policy in relation to the use of its powers under section 40A.
- (2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 40A.

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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 CMA may revise its statement of policy and, where it does so, it must publish the revised statement.
- (4) The CMA must consult such persons as it considers appropriate when preparing or revising its statement of policy.
- (5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (6) In deciding whether and, if so, how to proceed under section 40A, the CMA must have regard to the statement of policy which was most recently published under this section at the time when the failure concerned occurred.]

41 Agreements notified to the Commission.

- [^{F124}(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 [^{F125}OFT] from investigating it under this Part.
 - (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.]

Textual Amendments

F124 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))

F125 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.

- ^{F126}(1)
- ^{F126}(2)
- ^{F126}(3)
- ^{F126}(4)

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (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 ^{F127}... (5) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) 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 [^{F128}section 28 or 28A] is guilty of an offence and 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

F126 S. 42(1)-(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(8\)](#), [103\(3\)](#); [S.I. 2014/416](#), [art. 2\(1\)\(b\)](#) (with [Sch.](#))

F127 Words in s. 42(6) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(9\)](#), [103\(3\)](#); [S.I. 2014/416](#), [art. 2\(1\)\(b\)](#) (with [Sch.](#))

F128 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 [^{F129}, 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

F129 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 [^{F130}CMA] in connection with any function of the [^{F130}CMA] 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

Status: Point in time view as at 01/04/2014.

Changes to legislation: Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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)

- (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 [F130 CMA] in connection with any of [F131 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

F130 Word in s. 44(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 25** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F131 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)

C14 S. 44 applied (18.6.2001) by 2000 c. 8, s. 399; S.I. 2001/1820, art. 2, **Sch.**

Status:

Point in time view as at 01/04/2014.

Changes to legislation:

Competition Act 1998, Chapter III is up to date with all changes known to be in force on or before 06 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.