



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER III

INVESTIGATION AND ENFORCEMENT

Investigations

[^{F1}25 Power of OFT to investigate

- (1) In any of the following cases, the OFT may conduct an investigation.
- (2) The first case is where there are reasonable grounds for suspecting that there is an agreement which—
 - (a) may affect trade within the United Kingdom; and
 - (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (3) The second case is where there are reasonable grounds for suspecting that there is an agreement which—
 - (a) may affect trade between Member States; and
 - (b) has as its object or effect the prevention, restriction or distortion of competition within the Community.
- (4) The third case is where there are reasonable grounds for suspecting that the Chapter II prohibition has been infringed.
- (5) The fourth case is where there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed.

Status: Point in time view as at 01/05/2004.

Changes to legislation: Competition Act 1998, Cross Heading: Investigations is up to date with all changes known to be in force on or before 11 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 the Community.
- (8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the OFT—
- (a) considers that the agreement is exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption; and
 - (b) does not have reasonable grounds for suspecting that the circumstances may be such that it could exercise its power to cancel the exemption.
- (9) Subsection (3) does not permit an investigation to be conducted if the OFT—
- (a) considers that the agreement is an agreement to which the prohibition in Article 81(1) is inapplicable by virtue of a regulation of the Commission (“the relevant regulation”); and
 - (b) does not have reasonable grounds for suspecting that the conditions set out in Article 29(2) of the EC Competition Regulation for the withdrawal of the benefit of the relevant regulation may be satisfied in respect of that agreement.
- (10) Subsection (6) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption.
- (11) Subsection (7) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was an agreement to which the prohibition in Article 81(1) was inapplicable by virtue of a regulation of the Commission.
- (12) It is immaterial for the purposes of subsection (6) or (7) whether the agreement in question remains in existence.]

Textual Amendments

- 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](#)

26 Powers when conducting investigations.

- (1) For the purposes of an investigation [^{F2}under section 25], the [^{F3}OFT] may require any person to produce to [^{F3}it] a specified document, or to provide [^{F3}it] with specified information, which [^{F3}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.

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- (3) A notice under subsection (2) must indicate—
- (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the offences created by sections 42 to 44.
- (4) In subsection (1) “specified” means—
- (a) specified, or described, in the notice; or
 - (b) falling within a category which is specified, or described, in the notice.
- (5) The [F⁴OFT] 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

- F2** 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))
- F3** 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.)
- F4** Word in s. 26(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(20)(b)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

Modifications etc. (not altering text)

- 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.)

27 [F⁵Power to enter business premises without a warrant]

- (1) Any officer of the [F⁶OFT] who is authorised in writing by the [F⁶OFT] to do so (“an investigating officer”) may enter [F⁷any business premises] in connection with an investigation [F⁸under 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—

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- (a) if the [F⁶OFT] has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which [F⁹it] is investigating [F¹⁰section 25]; or
 - (ii) an undertaking the conduct of which [F⁹it] is investigating under [F¹¹section 25]; or
 - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
 - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (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 [F¹²stored 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 [F¹³or from which it can readily be produced in a visible and legible form].
 - [F¹⁴(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.]
- [F¹⁵(6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.]

Textual Amendments

- F5** 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)**
- F6** Word in s. 27 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(21)(a)**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F7** 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)**
- F8** 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))
- F9** 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.)
- F10** 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)**
- F11** 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)**

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- F12** 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)
- F13** 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)
- F14** 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)**
- F15** 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** 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 **[^{F16}Power to enter business premises under a warrant].**

- (1) On an application made by the [^{F17}OFT] to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on [^{F18}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 [^{F19}any business premises] documents which the [^{F17}OFT] has power under section 26 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
 - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the [^{F20}OFT], and any other of [^{F21}the OFT's officers whom the OFT] has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
 - (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
 - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);

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- (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 [^{F22}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 [^{F23}or from which it can readily be produced in a visible and legible form].
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- [^{F24}(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.
- [^{F25}(8) In this section “business premises” has the same meaning as in section 27.]

Textual Amendments

- F16** 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)**
- F17** Word in s. 28(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(22)(a)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F18** 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)**
- F19** 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)**
- F20** Word in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(22)(b)(i)**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F21** 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.)
- F22** 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)
- F23** 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)
- F24** 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.

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F25 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.)

C4 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)

C5 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**

C6 S. 28(2)(f) modified (prosp.) by 2001 c. 16, **ss. 63(2)(h)**, 138(2)

C7 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)

C8 S. 28(7) applied (prosp.) by 2001 c. 16, **ss. 57(1)(n)(2)(4)**, 138(2)

C9 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)

[^{F26}28A Power to enter domestic premises under a warrant

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

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

Textual Amendments

F26 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](#)

29 Entry of premises under warrant: supplementary.

- (1) A warrant issued under section 28 [^{F27}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 [^{F28}or 28A] are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
 - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

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

Textual Amendments

- F27** 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)**
- F28** 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.)
- C10** 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.)
- C11** 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**)

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[^{F29}30A Use of statements in prosecution

A statement made by a person in response to a requirement imposed by virtue of any of sections 26 [^{F30}to 28A] may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

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

Textual Amendments

- F29** S. 30A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 198, 279**; S.I. 2003/1397, art. 2(1), Sch.
- F30** Words in s. 30A substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 16**

[^{F31}31 Decisions following an investigation.

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

[^{F31}(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the OFT—

- (a) that the Chapter I prohibition has been infringed;
- (b) that the Chapter II prohibition has been infringed;
- (c) that the prohibition in Article 81(1) has been infringed; or
- (d) that the prohibition in Article 82 has been infringed.]

Textual Amendments

- F31** 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**

[^{F32}31A Commitments

- (1) Subsection (2) applies in a case where the OFT has begun an investigation under section 25 but has not made a decision (within the meaning given by section 31(2)).
- (2) For the purposes of addressing the competition concerns it has identified, the OFT may accept from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.
- (3) At any time when commitments are in force the OFT may accept from the person (or persons) who gave the commitments—
 - (a) a variation of them if it is satisfied that the commitments as varied will address its current competition concerns;
 - (b) commitments in substitution for them if it is satisfied that the new commitments will address its current competition concerns.

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

Textual Amendments

F32 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](#)

[^{F32}31B Effect of commitments under section 31A

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

Textual Amendments

F32 Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 1 para. 18](#)

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[^{F32}31C Review of commitments

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

Textual Amendments

F32 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**

[^{F32}31D Guidance

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

Textual Amendments

F32 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**

[^{F32}31E Enforcement of commitments

- (1) If a person from whom the OFT has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the OFT may apply to the court for an order—
 - (a) requiring the defaulter to make good his default within a time specified in the order; or

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- (b) if the commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all the costs of, or incidental to, the application for the order to be borne by—
- (a) the person in default; or
 - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.]

Textual Amendments

F32 Ss. 31A-31E inserted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 1 para. 18**

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