

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: the Competition and Markets Authority and Part 4: Competition Reform

Part 3: the Competition and Markets Authority

Schedule 4: The Competition and Markets Authority

Part 1: General

Membership

153. Paragraph 1 of Schedule 4 provides for the membership of the CMA, with all types of member being appointed by the Secretary of State. The CMA will consist of a chair, Board members, and panel members. The Secretary of State will consult the chair before appointing the other members. At least 5 members must be appointed to the Board (of which the chair will also be a member). At least one of the Board members must also be a panel member. Paragraph 1(5) provides that of the members of the CMA Board appointed under paragraph 1(1)(b), not more than half may be members of staff of the CMA. This provision has the effect of ensuring that a majority of the members of the CMA Board, which also includes the chair, will not be members of the CMA's staff.
154. Paragraph 1(7) and paragraph 11 have the effect of preventing a person holding office in the CAT from being appointed as a member of the CMA or as its chief executive or another member of its staff. Paragraph 2 provides for the terms and conditions of the members of the CMA to be determined by the Secretary of State.

Appointment and re-appointment

155. Paragraphs 3 and 4 set out the terms of appointment and re-appointment to the membership of the CMA. The term of appointment of the CMA chair and Board members is to be for a maximum period of 5 years.
156. Appointment to the CMA panel is to be for a maximum period of 8 years, and is not renewable except for the purpose of seeing out an inquiry to which the panellist has been appointed before the expiry of their original 8 year term. This is to ensure that panel members are not influenced by the prospect of re-appointment in taking their decisions. The provision on re-appointments replicates the current provision in the CA 1998 (paragraph 6 of Schedule 7) and allows for consistency of decision making throughout the investigation process, including the remedies stage and where an investigation has been remitted to the CMA following an appeal. A CMA panel member is not prevented from being appointed or re-appointed as a member of the Board during or after his or her term as a CMA panel member. Office of the Commissioner of Public Appointments

guidance will apply to the appointment process and length of tenure of members of the CMA.

157. [Paragraph 5](#) provides that the CMA must pay members remuneration, pension allowances and where required, compensation for loss of office, as specified by the Secretary of State.
158. [Paragraph 6](#) provides that members of the CMA may resign by notifying the Secretary of State. A panel member who is a member of both the CMA Board and CMA panel can resign one of these appointments whilst remaining in the other. [Paragraph 7](#) provides that a member of the CMA may be removed from office by the Secretary of State on the grounds of incapacity, misbehaviour or failure to carry out their duties.

Status

159. [Paragraph 8](#) provides that, in performing its functions, the CMA acts on behalf of the Crown.

Chief executive and other staff

160. [Paragraphs 9 and 10](#) make provisions for the appointment of a chief executive and staff to the CMA. The Secretary of State is to appoint a chief executive as a member of staff of the CMA following consultation with the chair of the CMA, for a term of no longer than 5 years. This term is renewable. The chief executive and other members of staff may be Board members of the CMA, but neither the chief executive nor any other member of staff may be the chair of the CMA or a panel member.
161. The CMA may appoint additional staff, but the number of other staff and their conditions of service must be approved by the Minister for the Civil Service. Members of staff of the CMA are to be regarded as civil servants.

Annual plan

162. [Paragraph 12](#) provides that the CMA will, before each financial year, publish an annual plan that sets out its main objectives, priorities and resource allocation among the activities to be carried out for the year ahead, and lay the plan before Parliament. These requirements are similar to those for the OFT set out in section 3 of the EA 2002, but aim to provide additional transparency on how the CMA intends to allocate resources against its objectives before each financial year. It does not prevent the CMA from re-allocating resources to respond to issues emerging in the course of the year. [Paragraph 13](#) provides for the CMA to consult on its proposals for the annual plan.

Performance report

163. [Paragraph 14](#) provides that, after the end of each financial year, the CMA will publish an annual report on its activities and performance, and lay the report before Parliament. It stipulates that the annual report will include a survey of developments in respect of matters falling within the scope of the OFT's functions; an assessment of progress against the year's annual plan prepared under [paragraph 12](#); a summary of the CMA's significant decisions, investigations and activities; a summary of how the CMA has allocated resources; and an assessment of its activities relating to enforcement functions. This is the minimum that must be included in the report; it is open for the CMA to include more information if it wishes. The CMA may also, as [paragraph 15](#) makes clear, prepare and publish other reports on any matters relating to its functions.

Concurrency report

164. [Paragraph 16](#) provides that the CMA will publish an annual report on how arrangements for co-operation between the CMA and the sectoral regulators with concurrent competition powers have worked. The report must include information about the use

by the CMA and sector regulators of their anti-trust powers (under Part 1 of the CA 1998) and market investigation referral powers (under Part 4 of the EA 2002) and any decision of a regulator that its CA 1998 powers were applicable but that it was more appropriate for it to use its other powers.

Documents

165. [Paragraph 17](#) provides for the authentication of the CMA's seal by a member of the CMA Board or by a person authorised for that purpose and for the admissibility in evidence of documents executed under the CMA's seal. Where a document is to be signed in accordance with Scottish law this provision does not apply.

Members of committees and sub-committees

166. [Paragraph 18](#) provides that committees and sub-committees of the CMA may include people who are not members of the CMA and that sub-committees of the CMA may include people who are not members of the committee that established the sub-committee. [Paragraph 29\(3\)](#) provides that the CMA Board may not delegate anything that it is required or permitted to do to committees and sub-committees that include people who are not members of the CMA or staff.

Additional Powers

167. [Paragraph 19](#) makes provision for the CMA to take an international role as regards certain matters, including consumer matters. The provision will enable the CMA to represent the UK Government in international *fora* in any field connected to its functions when requested by the Secretary of State. The provision also enables the CMA to assume the OFT's role in promoting good consumer practice outside the UK, for example as a member of the International Consumer Protection and Enforcement Network and the London Action Plan (which seeks to promote international spam enforcement cooperation and address spam related problems).
168. [Paragraph 20](#) makes provision for supplementary powers that are necessary or appropriate for the CMA to carry out its functions. Both the CC and OFT have similar powers ([paragraph 8 of Schedule 7 to the CA 1998](#); and [paragraph 13 of Schedule 1 to the EA 2002](#) respectively). Typically these powers have been used by the CC to conduct preliminary work on competition cases, and to carry out post inquiry evaluations of the impact of their decisions.

Consequential amendments (Public records, Parliamentary Commissioner, Disqualification, Freedom of information, and Equality)

169. [Paragraphs 21 to 26](#) make consequential amendments to a number of Acts to make them applicable to the CMA. These are: the Public Records Act 1958, the Parliamentary Commissioner Act 1967, the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, the Freedom of Information Act 2000, and the Equality Act 2010.