
STATUTORY INSTRUMENTS

2019 No. 1245

The Competition (Amendment etc.)
(EU Exit) (No. 2) Regulations 2019

PART 3

Amendment of Part 3 of the 2019 Regulations: amendment of the Enterprise Act 2002

8. Part 3 of the 2019 Regulations is amended as follows.
9. After regulation 48 insert—
 - “48A. After section 84(1) insert—

“Retained EU Merger Commitments

84A Retained EU merger commitments

(1) Retained EU merger commitments are to be treated for the purposes of this Chapter as accepted by the CMA.

(2) A retained EU merger commitment—

- (a) may be varied or superseded by another commitment; and
- (b) may be released by the CMA.

(3) The provision which may be contained in a variation of a retained EU merger commitment or in a commitment which supersedes a retained EU merger commitment is not limited to the provision which is permitted by Schedule 8.

(4) A retained EU merger commitment ceases to be in force if an order under section 84C comes into force in relation to the subject-matter of the retained EU merger commitment.

(5) The CMA must, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing a retained EU merger commitment under this section.

(6) In this Part—

“the 2019 Regulations” means the Competition (Amendment etc.) (EU Exit) Regulations 2019;

“retained EU merger commitment” means a commitment which is comprised in a retained EU merger decision, except a commitment which is revoked by paragraph 2A of Schedule 3 to the 2019 Regulations and includes—

- (a) any other provision contained in the relevant retained decision if, or to the extent that, it relates to the commitment, and

(1) Section 84 of the Enterprise Act 2002 (c. 40) was amended by paragraphs 59 and 124 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

(b) any decisions or approvals if, or to the extent that, they are made under, or relate to, the commitment;

and in paragraph (a) “other provision” includes obligations or conditions, procedural provision, and enforcement provision;

“retained EU merger decision” means an EU decision falling within paragraph 2(1)(b) or (d) of Schedule 3 to the 2019 Regulations.

(7) References in this Part to a retained EU merger commitment include a commitment which supersedes a retained EU merger commitment.

84B Power of directions in connection with retained EU merger commitments

(1) For the purpose of ensuring compliance with a retained EU merger commitment, the CMA may give directions falling within subsection (2) to—

(a) a person specified in the directions; or

(b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.

(2) Directions fall within this subsection if they are directions—

(a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the retained EU merger commitment concerned; or

(b) to do, or refrain from doing, anything so specified or described which the person might be required by that commitment to do or refrain from doing.

(3) The CMA may vary or revoke any directions so given.

(4) A direction under this section may extend to a person’s conduct outside the United Kingdom if (and only if) the person is—

(a) the person who gave the retained EU merger commitment concerned;

(b) a United Kingdom national;

(c) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(d) a person carrying on business in the United Kingdom.

(5) The court may by order require any person who has failed to comply with directions given under this section to comply with them, or otherwise remedy the failure, within such time as may be specified in the order.

(6) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.

(7) An order under subsection (5) or (6) is to be made on the application of the CMA.

(8) An order under subsection (5) or (6) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.

(9) In this section “the court” means—

- (a) in relation to England and Wales or Northern Ireland, the High Court; and
- (b) in relation to Scotland, the Court of Session.

84C Order-making power where retained EU merger commitments not fulfilled

- (1) Subsection (2) applies where the CMA considers that—
 - (a) a retained EU merger commitment has not been, is not being or will not be fulfilled;
 - (b) in relation to a retained EU merger commitment which has been varied or which supersedes a previous retained EU merger commitment, information which was false or misleading in a material respect was given to the CMA by the person giving the commitment before the CMA decided to accept the variation or new commitment (as the case may be); or
 - (c) it has reasonable grounds for suspecting that information which led to the inclusion of a retained EU merger commitment in a retained EU merger decision was false or misleading in a material respect.
- (2) The CMA may make an order under this section for the purpose of remedying, mitigating or preventing the competition concerns which the retained EU commitment concerned was intended to address.
- (3) In proceeding under subsection (2), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the competition concerns.
- (4) An order under this section may contain—
 - (a) anything permitted by Schedule 8 (as modified by subsection (7)); and
 - (b) such supplementary, consequential or incidental provision as the CMA considers appropriate.
- (5) An order under this section—
 - (a) comes into force at such time as is determined by or under the order;
 - (b) may contain provision which is different from the provision contained in the retained EU merger commitment concerned; and
 - (c) may be varied or revoked by another order.
- (6) The CMA must, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.
- (7) For the purposes of this section Schedule 8 applies with the following modifications—
 - (a) paragraph 8(2) is to be read as if—
 - (i) in sub-paragraph (2), for the words from “relevant report” to the end there were substituted “retained EU merger decision which includes the retained EU merger commitment to which the order relates identifies that a commitment is required in relation to the prices charged for the goods or services”; and

(2) Paragraph 8 of Schedule 8 was amended by paragraphs 59 and 161 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (ii) sub-paragraph (3) were omitted;
- (b) paragraph 14 is to be read as if after “84” there were inserted “, 84C”.

48B.—(1) Section 86 is amended follows.

(2) At the beginning insert—

“(A1) An enforcement order under section 84C may extend to a person’s conduct outside the United Kingdom if (and only if) the person is—

- (a) the person who gave the commitment;
- (b) a United Kingdom national;
- (c) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
- (d) a person carrying on business in the United Kingdom.”.

(3) In subsection (1) for “An” substitute “Any other”.

(4) In subsection (6)—

- (a) after “Part” insert “(unless otherwise provided)”;
- (b) for “or 84” substitute “, 84 or 84C”.

(5) In the italic heading before section 86, after “undertakings” insert “, commitments”.

48C. In section 88(1), for “or 84” substitute “, 84 or 84C”.

48D.—(1) In section 90, after “undertakings” insert “or varying retained EU merger commitments”.

(2) In the heading to that section, after “undertakings” insert “, commitments”.

48E.—(1) Section 91(3) is amended as follows.

(2) In subsection (3)—

- (a) after paragraph (b) insert—
 - “(ba) the provisions of any retained EU merger commitment;”;
- (b) in paragraph (c), after “undertaking” insert “, commitment”.

(3) In the heading, after “undertakings” insert “, commitments”.

48F.—(1) Section 92(4) is amended as follows.

(2) At the beginning insert—

“(A1) This section applies to—

- (a) enforcement undertakings, and
- (b) enforcement orders other than orders under section 84C (for provision about the monitoring of orders under that section see section 92A).”.

(3) In the heading, for “orders” substitute “certain orders”.

48G. After section 92 insert—

(3) Section 91 was amended by paragraphs 59 and 126 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24).
 (4) Section 92 was amended by paragraphs 59 and 128 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

“92A Duty of CMA to monitor retained EU merger commitments and related enforcement orders

- (1) The CMA must keep under review the carrying out of any retained EU merger commitment or any enforcement order under section 84C.
- (2) The CMA must, in particular, from time to time consider—
 - (a) whether a retained EU merger commitment or an enforcement order under section 84C has been or is being complied with;
 - (b) whether, by reason of any change of circumstances or for any other reason, a retained EU merger commitment is no longer appropriate and—
 - (i) one or more of the parties to it can be released from it; or
 - (ii) it needs to be varied or to be superseded by a new commitment;
 - (c) whether, by reason of any change of circumstances, an enforcement order under section 84C is no longer appropriate and needs to be varied or revoked.
- (3) The CMA must take such action as it considers appropriate in relation to—
 - (a) any possible variation or release by it of a retained EU merger commitment;
 - (b) any possible new commitment to be accepted by it so as to supersede a retained EU merger commitment;
 - (c) any possible variation or revocation by it of an enforcement order under section 84C;
 - (d) any possible enforcement order under section 84C to be made by it instead of a retained EU merger commitment;
 - (e) the enforcement by it by virtue of section 95A(2) of a retained EU merger commitment; or
 - (f) the enforcement by it by virtue of section 94(6) of an enforcement order under section 84C.
- (4) The CMA must keep under review the effectiveness of retained EU merger commitments and of enforcement orders under section 84C.
- (5) The CMA must, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (4).
- (6) The CMA must—
 - (a) give a copy of any report prepared by it under subsection (5) to the Secretary of State; and
 - (b) publish the report.”.

48H. After section 95 insert—

“95A Rights to enforce retained EU merger commitments

- (1) Any person to whom a retained EU merger commitment relates has a duty to comply with it.
- (2) Compliance with a retained EU merger commitment is enforceable by civil proceedings brought by the CMA for an injunction or for interdict or for any other appropriate relief or remedy.

(3) The rights of the CMA under subsection (2) are not affected by any provisions of a retained EU merger commitment which provide for disputes relating to compliance with a commitment to be resolved by arbitration.

(4) This section does not affect any right that any person other than the CMA may have to bring civil proceedings for contravention or apprehended contravention of a retained EU merger commitment.”.”.

10. After regulation 50 insert—

“50A.—(1) Section 109(5) is amended as follows.

(2) In subsection (A1), after paragraph (b) insert—

“(c) assisting the CMA in carrying out any commitments enforcement functions.”.

(3) In subsection (8A)—

(a) in the words before paragraph (a), for “(A1)” substitute “(A1)(a) and (b)”;

(b) in paragraphs (a) and (b), for “enforcement orders”, in each place it occurs, substitute “relevant enforcement orders”.

(4) After subsection (8A) insert—

“(8B) In subsection (8A) “relevant enforcement order” means an order under section 72, 75, 76, 81, 83 or 84 or under paragraph 2, 5, 6, 10 or 11 of Schedule 7.

(8C) In subsection (A1)(c), “commitments enforcement functions” means—

(a) functions conferred on the CMA by section 84B or functions conferred by virtue of section 87 on the CMA by enforcement orders under section 84C;

(b) functions of the CMA in relation to the variation, supersession or release of retained EU merger commitments or the variation or revocation of enforcement orders made under section 84C;

(c) functions of the CMA under or by virtue of section 84C in relation to retained EU merger commitments;

(d) functions of the CMA under section 92A in relation to retained EU merger commitments or enforcement orders under section 84C.”.

50B.—(1) Section 110(6) is amended as follows.

(2) In subsection (2), before “The CMA” insert “If the notice is given for the permitted purpose under section 109(A1)(a) or (b),”.

(3) In subsection (9)—

(a) after “or 51(4)” insert “if the notice is given for the permitted purpose under section 109(A1)(a) or (b)”;

(b) for “that enactment” substitute “section 51(4)”.

50C.—(1) Section 110A(7) is amended as follows.

(2) In subsection (3), for “enforcement order” substitute “relevant enforcement order (within the meaning of that section)”.

(5) Section 109 was amended by section 29 of, paragraphs 59 and 143 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 and by [S.I. 2014/892](#).

(6) Section 110 was amended by paragraphs 59 and 144 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 110 but it is not relevant to these Regulations.

(7) Section 110A was inserted by section 29 of the Enterprise and Regulatory Reform Act 2013.

(3) After subsection (3) insert—

“(3A) Where the section 109 power is exercised in connection with a commitments enforcement function (within the meaning of that section), the relevant day is the day when the retained EU merger commitment concerned is superseded or released or (as the case may be) the enforcement order under section 84C concerned is revoked.”.

(3) In subsection (4), after “(3)” insert “or (3A)”.

11. After regulation 51 insert—

“**51A.**—(1) Section 120(8) is amended as follows.

(2) In subsection (1), for the words from “of the CMA” to “special merger situation” substitute “referred to in subsection (1A)”.

(3) After subsection (1) insert—

“(1A) The decisions referred to in this section are—

- (a) a decision of the CMA, OFCOM or the Secretary of State under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation;
- (b) a decision of the CMA in connection with a retained EU merger commitment or an enforcement order under section 84C.”.

(4) In subsection (2), in paragraph (b)—

- (a) the words “a reference or possible reference” become sub-paragraph (i) of that paragraph, and
- (b) after that sub-paragraph insert—
 - “or
 - (ii) a retained EU merger commitment or an enforcement order under section 84C.”.

12. In regulation 55, after paragraph (c) insert—

“(d) in the appropriate place insert—

“Retained EU merger commitment	Section 84A(6)
Retained EU merger decision	Section 84A(6)”

13. After regulation 59 insert—

“**59A.**—(1) Schedule 10 is amended as follows.

(2) In the heading to Schedule 10, after “UNDERTAKINGS” insert “, COMMITMENTS”.

(3) In the italic heading before paragraph 1, after “undertakings” insert “and commitments”.

(4) In paragraph 1—

- (a) omit the “and” at the end of sub-paragraph (a);
- (b) after sub-paragraph (a) insert—

(8) Section 120 was amended by paragraph 22 of Schedule 16 to the Communications Act 2003 (c. 21) and section 31 of, and paragraphs 59 and 155 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

- “(aa) any commitment which varies or supersedes a retained EU merger commitment under section 84A (but does not apply to such a commitment which falls within paragraph 1A); and”;
- (c) in sub-paragraph (b), for “or 84” substitute “, 84 or 84C”.
- (5) After paragraph 1 insert—
- “**1A.** A commitment falls within this paragraph if—
- (a) it does not vary the retained EU merger commitment in any material respect; or
- (b) it only extends a time limit or time limits specified in the retained EU merger commitment.”.
- (6) In paragraph 2(1)(9)—
- (a) in the words before paragraph (a), after “an undertaking” insert “or commitment”;
- (b) in paragraph (a), after “proposed undertaking” insert “, commitment”.
- (7) In paragraph 2(2)—
- (a) in paragraph (a), after “undertaking” insert “or commitment”;
- (b) paragraphs (b) and (c), after “undertaking”, in both places, insert “, commitment”;
- (c) in paragraph (d), after “undertaking” insert “or commitment”;
- (d) in paragraph (e), after “undertaking” insert “, commitment”;
- (e) in paragraph (f)—
- (i) after “an undertaking” insert “or commitment”;
- (ii) after “proposed undertaking” insert “, commitment”.
- (8) In paragraphs 2(4) and 3(1), after “undertaking”, in both places, insert “or commitment”.
- (9) In paragraph 4—
- (a) in the words before sub-paragraph (a) and in sub-paragraph (a), after “undertaking”, in both places, insert “or commitment”;
- (b) in sub-paragraph (b), after “undertaking” insert “, commitment”.
- (10) In paragraph 5(1), in paragraph (a), after “undertaking” insert “, commitment”.
- (11) In the italic heading before paragraph 6, after “undertakings” insert “, commitments”.
- (12) In paragraph 6—
- (a) omit the “or” at the end of sub-paragraph (a);
- (b) after sub-paragraph (a) insert—
- “(aa) release a retained EU merger commitment under section 84A (other than in connection with accepting a commitment which varies or supersedes a retained EU merger commitment); or”;
- (c) in sub-paragraph (b), for “or 84” substitute “, 84 or 84C”.
- (13) In paragraphs 7 and 8, after “undertaking”, in each place it occurs, insert “or commitment”.

