

**2019 No. 93**

**EXITING THE EUROPEAN UNION**  
**COMPETITION**

**The Competition (Amendment etc.) (EU Exit) Regulations 2019**

*Made* - - - - *22nd January 2019*

*Coming into force in accordance with regulation 1(1)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, paragraph 1(1) of Schedule 4 to, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 3(1) of Schedule 4 to that Act, these Regulations are made with the consent of the Treasury.

In accordance with paragraphs 1(1) and 12(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**Introduction**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Competition (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

(2) An amendment, repeal or revocation made by these Regulations has the same extent as the provision to which it relates.

(3) Transitional or saving provision made by these Regulations has the same extent as the provision to which it relates.

**PART 2**

**Amendment of the Competition Act 1998**

2. The Competition Act 1998(b) is amended as follows.

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(a) 2018 c. 16.

(b) 1998 c. 41.

**3.—**(1) Section 10(a) is amended as follows.

(2) In the heading, for “Parallel exemptions” substitute “Retained exemptions”.

(3) Before subsection (1) insert—

“(A1) An agreement is exempt from the Chapter I prohibition if it falls within a category of agreements specified as exempt in a retained block exemption regulation.”.

(4) Omit subsections (1) and (2).

(5) In subsection (3), for “parallel exemption” substitute “retained exemption”.

(6) In subsection (4)—

(a) for “parallel exemption” substitute “retained exemption”;

(b) omit paragraph (a) (together with the final “and”);

(c) in paragraph (b), for “exemption from the Community prohibition” substitute “retained block exemption regulation”.

(7) In subsection (5)—

(a) in paragraph (a)—

(i) for “parallel exemption” substitute “retained exemption”;

(ii) after “effect” insert “in respect of an agreement”;

(b) in paragraph (d), after “exemption” insert “in respect of an agreement”.

(8) Omit subsections (9) to (11).

(9) After subsection (11), insert—

“(12) In this Part, “retained block exemption regulation” means the following regulations as amended from time to time—

(a) Council Regulation (EC) 169/2009 applying rules of competition to transport by rail, road and inland waterway;

(b) Commission Regulation (EC) 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia);

(c) Commission Regulation (EU) 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;

(d) Commission Regulation (EU) 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector;

(e) Commission Regulation (EU) 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements;

(f) Commission Regulation (EU) 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements;

(g) Commission Regulation (EU) 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements.”.

**4.** After section 10 insert—

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(a) Section 10 was amended by paragraph 38(1) and (8) of Schedule 25 to the Enterprise Act 2002 (c. 40), paragraphs 1 and 4 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24), S.I. 2004/1261 and S.I. 2012/1809.

## **“10A Power to vary etc retained block exemption regulations**

(1) The Secretary of State may by regulations vary or revoke a retained block exemption regulation.

(2) In exercising the power under subsection (1), the Secretary of State must have regard to the conditions specified in section 9(1) for exemption from the Chapter 1 prohibition.

(3) If, in the opinion of the CMA, it is appropriate to vary or revoke a retained block exemption regulation, the CMA may make a recommendation to that effect to the Secretary of State.

(4) Before making a recommendation under subsection (3), the CMA must—

- (a) publish details of its proposed recommendation in such a way as it thinks most suitable for bringing it to the attention of those likely to be affected; and
- (b) consider any representations about it which are made to it.

(5) Before exercising the power to vary or revoke a retained block exemption regulation (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—

- (a) inform the CMA of the proposed variation or revocation; and
- (b) take into account any comments made by the CMA.”.

**5.** Omit section 11(a).

**6.**—(1) Section 25(b) is amended as follows.

(2) Omit subsections (3), (5) and (7).

(3) In subsection (8)(a), for “parallel exemption” substitute “retained exemption”.

(4) Omit subsection (9).

(5) In subsection (10), for “parallel exemption” substitute “retained exemption”.

(6) Omit subsection (11).

(7) In subsection (12), omit “or (7)”.

**7.** In section 25A(1)(b)(c), for “subsections (2) to (7)” substitute “subsections (2), (4) and (6)”.

**8.** In section 31(2)(d)—

- (a) at the end of paragraph (a), insert “or”;
- (b) omit paragraphs (c) and (d).

**9.** In section 32(1)(e), omit “or that it infringes the prohibition in Article 101(1)”.

**10.** In section 33(1)(f), omit “or that it infringes the prohibition in Article 102”.

**11.** In section 35(g)—

- (a) in subsection (1), for “subsections (8) and (9)” substitute “subsection (8)”;
- (b) in subsection (6), for “section 25(2), (3), (6) and (7)” substitute “section 25(2) and (6)”;
- (c) in subsection (7), for “section 25(4) and (5)” substitute “section 25(4)”;

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(a) Section 11 was amended by S.I. 2012/1809.

(b) Section 25 was substituted by S.I. 2004/1261, and subsequently amended by paragraphs 1, 5(1), (2) and (3) of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2011/1043 and S.I. 2012/1809.

(c) Section 25A was inserted by section 42(1) and (2) of the Enterprise and Regulatory Reform Act 2013.

(d) Section 31(2) was amended by paragraphs 1 and 10 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809.

(e) Section 32(1) was amended by paragraph 38(1) and (24) of Schedule 25 to the Enterprise Act 2002, paragraphs 1 and 16 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261 and S.I. 2012/1809.

(f) Section 33(1) was amended by paragraph 38(1) and (25) of Schedule 25 to the Enterprise Act 2002, paragraphs 1 and 17 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261 and S.I. 2012/1809.

(g) Section 35 was amended by paragraphs 1 and 19 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261, S.I. 2011/1043 and S.I. 2012/1809.

(d) omit subsection (9).

**12.** In section 36(a)—

- (a) in subsection (1), omit “or that it has infringed the prohibition in Article 101(1)”;
- (b) in subsection (2), omit “or that it has infringed the prohibition in Article 102”;
- (c) in subsection (7A)(b)—
  - (i) in sub-paragraph (i), omit “or the prohibition in Article 81(1)”;
  - (ii) in sub-paragraph (ii), omit “or the prohibition in Article 82”.

**13.** In section 38(b)—

- (a) in subsection (1), for the words from “the Chapter 1 prohibition” to the end substitute “the Chapter 1 prohibition or the Chapter 2 prohibition.”;
- (b) omit subsection (1A);
- (c) omit subsections (9) and (10).

**14.** In section 46(3)(c)—

- (a) omit paragraphs (b) and (d);
- (b) in paragraph (e), for “parallel exemption” substitute “retained exemption”;
- (c) omit paragraph (f).

**15.** In section 47(1)(a)(d), for “paragraphs (a) to (f)” substitute “paragraph (a), (c) or (e)”.

**16.**—(1) Section 47A(e) is amended as follows.

(2) In subsection (2)—

- (a) at the end of paragraph (a), insert “or”;
- (b) omit paragraphs (c) and (d).

(3) For subsection (6) substitute—

“(6) In this Part (except in section 49C) “infringement decision” means—

- (a) a decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed, or
- (b) a decision of the Tribunal on an appeal from the decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed.”.

**17.** In section 49C(11)(f), for the definition of “infringement decision” (but not the final “and”) substitute—

““infringement decision” means a decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed.”.

**18.** In section 52, omit subsection (1A)(g).

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- (a) Section 36 was amended by paragraph 38(1) and (28) of Schedule 25 to the Enterprise Act 2002, section 44 of, and paragraphs 1 and 20 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1261 and S.I. 2012/1809.
  - (b) Section 38 was amended by section 40 of, and paragraphs 1 and 22 of Schedule 5 and paragraphs 8 and 10 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraph 65 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and S.I. 2004/1261. There are other amendments to section 38 but none is relevant to these Regulations.
  - (c) Section 46(3) was substituted by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 26 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.
  - (d) Section 47(1) was first substituted by section 17 of the Enterprise Act 2002 (c.40), further substituted by S.I. 2004/1261, and subsequently amended by paragraphs 1 and 27 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
  - (e) Section 47A was initially inserted by section 18(1) of the Enterprise Act 2002, and subsequently substituted by paragraphs 1 and 4 of Schedule 8 to the Consumer Rights Act 2015 (c.15).
  - (f) Section 49C was inserted by paragraphs 1 and 12 of Schedule 8 to the Consumer Rights Act 2015.
  - (g) Subsection (1A) was initially inserted into section 52 by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 32 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.

- 19.**—(1) Section 58(2)(a) is amended as follows.
- (2) In the definition of “Part I proceedings”—
- (a) at the end of paragraph (za), insert “or”;
  - (b) omit paragraph (b) and the “or” before it.
- (3) In the definition of “relevant party”—
- (a) in paragraph (a), omit “or the prohibition in Article 101(1)”;
  - (b) in paragraph (b), omit “or the prohibition in Article 102”.

**20.** In section 58A(b), omit subsection (4).

**21.**—(1) Section 59(1)(c) is amended as follows.

(2) Omit the definitions of—

- (a) “Article 101(1)”;
- (b) “Article 101(3)”;
- (c) “Article 102”;
- (d) “the Commission”;
- (e) “the Council”;
- (f) “the EEA Agreement”;
- (g) “the European Court”;
- (h) “the EC Competition Regulation”;
- (i) “parallel exemption”;
- (j) “section 11 exemption” (including the final “and”);
- (k) “the Treaty”.

(3) In the definition of “the court”, for “60” substitute “60A”.

(4) At the appropriate places, insert—

““retained block exemption regulation” has the meaning given in section 10(12);”;

““retained exemption” has the meaning given in section 10(3);”.

**22.** Omit section 60(d).

**23.** After section 60 insert—

**“60A Certain principles etc to be considered or applied from exit day**

(1) This section applies when one of the following persons determines a question arising under this Part in relation to competition within the United Kingdom—

- (a) a court or tribunal;
- (b) the CMA;
- (c) a person acting on behalf of the CMA in connection with a matter arising under this Part.

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- (a) Section 58(2) was amended by paragraphs 1 and 36 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 1 and 13 of Schedule 8 to the Consumer Rights Act 2015, S.I. 2004/1261 and S.I. 2012/1809.
  - (b) Section 58A was inserted by section 20(1) of the Enterprise Act 2002 and subsequently substituted by paragraphs 1 and 14 of Schedule 8 to the Consumer Rights Act 2015 and further amended by S.I. 2017/385.
  - (c) Section 59(1) was amended by section 20(3) of the Enterprise Act 2002, paragraphs 218 and 221 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 1 and 15 of Schedule 8 to the Consumer Rights Act 2015, S.I. 2004/1261, S.I. 2011/1043, S.I. 2012/1809 and S.I. 2017/385; there are other amendments to section 59 but none is relevant to these Regulations.
  - (d) Section 60 was amended by paragraphs 1 and 39 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2011/1043.

(2) The person must act (so far as is compatible with the provisions of this Part) with a view to securing that there is no inconsistency between—

- (a) the principles that it applies, and the decision that it reaches, in determining the question, and
- (b) the principles laid down by the Treaty on the Functioning of the European Union and the European Court before exit day, and any relevant decision made by that Court before exit day, so far as applicable immediately before exit day in determining any corresponding question arising in EU law,

subject to subsections (4) to (7).

(3) The person must, in addition, have regard to any relevant decision or statement of the European Commission made before exit day and not withdrawn.

(4) Subsection (2) does not require the person to secure that there is no inconsistency with a principle or decision referred to in subsection (2)(b) so far as the principle or decision is excluded from the law of England and Wales, Scotland and Northern Ireland on or after exit day.

(5) For the purposes of subsection (4), a principle or decision is to be treated as not excluded from the law of England and Wales, Scotland and Northern Ireland if it is excluded only by virtue of an exclusion or revocation in the Competition (Amendment etc.) (EU Exit) Regulations 2019.

(6) Subsection (2) does not apply so far as the person is bound by a principle laid down by, or a decision of, a court or tribunal in England and Wales, Scotland or Northern Ireland that requires the person to act otherwise.

(7) Subsection (2) does not apply if the person thinks that it is appropriate to act otherwise in the light of one or more of the following—

- (a) differences between the provisions of this Part under consideration and the corresponding provisions of EU law as those provisions of EU law had effect immediately before exit day;
- (b) differences between markets in the United Kingdom and markets in the European Union;
- (c) developments in forms of economic activity since the time when the principle or decision referred to in subsection (2)(b) was laid down or made;
- (d) generally accepted principles of competition analysis or the generally accepted application of such principles;
- (e) a principle laid down, or decision made, by the European Court on or after exit day;
- (f) the particular circumstances under consideration.

(8) In subsection (2)(b), the reference to principles laid down before exit day is a reference to such principles as they have effect in EU law immediately before exit day, disregarding the effect of principles laid down, and decisions made, by the European Court on or after exit day.

(9) In this section, references to a decision of the European Court or the European Commission include a decision as to—

- (a) the interpretation of a provision of EU law;
- (b) the civil liability of an undertaking for harm caused by its infringement of EU law.

#### **24. Omit Parts 2 and 2A(a).**

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(a) Part 2 was substituted, and Part 2A was inserted, by S.I. 2004/1261. There are amendments to those Parts, but none is relevant to these Regulations.

- 25.** In section 72(1)(a), omit “, 65 or 65L to 65N”.
- 26.**—(1) Section 73(b) is amended as follows.
- (2) In subsection (4)—
- (a) omit “or 65D”;
  - (b) in paragraph (a), omit “or (as the case may be) section 65F”;
  - (c) in paragraph (b), for “none of sections 28, 28A, 65G and 65H applies” substitute “sections 28 and 28A do not apply”.
- (3) Omit subsection (6).
- (4) In subsection (6A), for “subsections (4) and (6)” substitute “subsection (4)”;
- (5) In subsection (8)—
- (a) in paragraph (a), omit “or 65F”;
  - (b) in paragraph (b), for “section 28, 28A, 62, 62A, 63, 65G or 65H” substitute “section 28 or 28A”.
- 27.** Omit section 75A(c).
- 28.** In Schedule 1, omit Part 2(d).
- 29.**—(1) Schedule 3 is amended as follows.
- (2) Omit paragraph 3(e) (and the italic heading before it).
- (3) In paragraph 5, in sub-paragraph (3), omit paragraphs (b) and (c).
- 30.**—(1) Schedule 8A(f) is amended as follows.
- (2) In paragraph 2(1)—
- (a) at the end of paragraph (a), insert “and”;
  - (b) omit paragraphs (c) and (d).
- (3) In paragraph 3—
- (a) in sub-paragraph (1)—
    - (i) at the end of paragraph (a), insert “and”;
    - (ii) omit paragraphs (c) and (d);
  - (b) omit sub-paragraph (2);
  - (c) in sub-paragraph (4)—
    - (i) for “Subsections (3) and (4) of section 58A apply” substitute “Section 58A(3) applies”;
    - (ii) for “the CMA, a regulator or the Commission” substitute “the CMA or a regulator”;
  - (d) omit sub-paragraphs (5) and (6).
- (4) In paragraph 12—
- (a) in sub-paragraph (5), at the end insert “(“the SME Annex”), subject to sub-paragraph (6)”;
  - (b) after sub-paragraph (5), insert—

“(6) For the purposes of this paragraph, the SME Annex has effect as if—

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- (a) Section 72(1) was amended by S.I. 2004/1261.
  - (b) Section 73 was amended by S.I. 2004/1261.
  - (c) Section 75A was inserted by S.I. 2004/1261; there are amendments to section 75A, but none is relevant to these Regulations.
  - (d) There is an amendment to Part 2 but it is not relevant to these Regulations.
  - (e) Paragraph 3 was amended by S.I. 2007/126 and S.I. 2017/701.
  - (f) Schedule 8A was inserted by S.I. 2017/385.

- (a) in Article 2(1), for “EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million” there were substituted “£44,000,000 and/or an annual balance sheet total not exceeding £38,000,000”;
  - (b) in Article 2(2), for “EUR 10 million” there were substituted “£8,800,000”;
  - (c) in Article 2(3), for “EUR 2 million” there were substituted “£1,750,000”;
  - (d) in Article 3(2)(a), for “EUR 1 250 000” there were substituted “£1,100,000”;
  - (e) in Article 3(2)(d), for “EUR 10 million” there were substituted “£8,800,000”;
  - (f) in Article 3(5), for “by national or Community rules” there were substituted “under the law of the United Kingdom (or any part of it)”;
  - (g) in Article 5(b), for “national law” there were substituted “the law of the United Kingdom (or any part of it)”.
- (5) In paragraph 14(1)(a), omit “or the prohibition in Article 101(1)”.
- (6) Omit paragraph 35 (and the italic heading before it).
- 31.**—(1) Schedule 9 is amended as follows.
- (2) In paragraph 5(1)(d)(a)—
- (a) at the end of sub-paragraph (i), insert “or”;
  - (b) omit sub-paragraph (ii);
  - (c) omit sub-paragraph (iv) and the “or” before it.
- (3) In paragraph 5(2)(b)—
- (a) at the end of paragraph (a), insert “or”;
  - (b) omit paragraph (b);
  - (c) omit paragraph (d) and the “or” before it.
- (4) In paragraph 8(c), omit sub-paragraph (b);
- (5) For the italic heading before paragraph 9 substitute “*Retained exemptions*”.
- (6) In paragraph 9(a)(i), for “parallel exemption” substitute “retained exemption”.
- (7) Omit paragraph 10 and the italic heading before it.

## PART 3

### Amendment of the Enterprise Act 2002

- 32.** The Enterprise Act 2002(d) is amended as follows.
- 33.** In section 16(6)(e), for the definition of “infringement issue” substitute—
- ““infringement issue” means any question relating to whether or not an infringement of the Chapter I prohibition or the Chapter II prohibition has been or is being committed;”.
- 34.**—(1) Section 22(f) is amended as follows.
- (2) In subsection (3)—

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- (a) Paragraph 5(1)(d) was substituted by S.I. 2004/1261 and subsequently amended by paragraph 58(1) and (4) of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.
  - (b) Paragraph 5(2) was substituted by S.I. 2004/1261 and subsequently amended by paragraph 58(1) and (4) of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.
  - (c) Paragraph 8 was substituted by S.I. 2004/1261.
  - (d) 2002 c. 40.
  - (e) The definition of “infringement issue” in section 16(6) was amended by S.I. 2012/1809.
  - (f) Section 22 was amended by section 406(7) of, and Schedule 19 to, the Communications Act 2003 (c. 21), paragraphs 59 and 67 of Schedule 5, and paragraphs 1 and 2 of Schedule 8, to the Enterprise and Regulatory Reform Act 2013 and S.I. 2004/1079; there are other amendments to section 22 but none is relevant to these Regulations.



- (a) at the end of paragraph (c), insert “or”;
  - (b) omit paragraphs (e) and (f).
- (3) Omit subsection (3A).
- 35.** In section 25(a)—
- (a) omit subsections (6), (7) and (8);
  - (b) in subsection (10)(b), for “subsections (2), (4) and (6)” substitute “subsections (2) and (4)”.
- 36.—**(1) Section 33(b) is amended as follows.
- (2) In subsection (3)—
- (a) at the end of paragraph (c), insert “or”;
  - (b) omit paragraphs (e) and (f).
- (3) Omit subsection (3A).
- 37.** In section 34(1)(b), for “, 59(2) or 67(2)” substitute “or 59(2)”.
- 38.** In section 34ZA(c), omit subsection (5).
- 39.** In section 34ZB, omit subsections (5) and (8).
- 40.—**(1) Section 34ZC is amended as follows.
- (2) In subsection (1), for “subsections (1), (4) or (5)” substitute “subsections (1) or (4)”.
- (3) In subsection (3), for “section 34ZB(1), (4), or (5)” substitute “section 34ZB(1) or (4)”.
- (4) In subsection (4)(b), for “one or more of subsections (1) and (5)” substitute “subsection (1)”.
- 41.** Omit section 34A(d) (and the italic heading before it).
- 42.—**(1) Section 42(e) is amended as follows.
- (2) In subsection (1)(d)—
- (a) in sub-paragraph (i)—
    - (i) for “section 22(3)(za), (a) or (e)” substitute “section 22(3)(za) or (a)”;
    - (ii) for “33(3)(za), (a) or (e)” substitute “33(3)(za) or (a)”;
  - (b) omit sub-paragraph (ii) and the “or” before it.
- (3) In subsection (6)—
- (a) in paragraph (b), omit “, (6) and (8)”;
  - (b) in paragraph (f), for “after the word “(4)” there were inserted “, (5A)”” substitute “for “and (4)” there were substituted “, (4) and (5A)””.
- 43.** In section 46(f)—
- (a) in subsection (1), omit paragraphs (b) and (c);

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- (a) Section 25 was amended by paragraphs 59 and 70 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2004/1079; there are other amendments to section 25 but none is relevant to these Regulations.
  - (b) Section 33 was amended by section 406(7) of, and Schedule 19 to, the Communications Act 2003, paragraphs 59 and 72 of Schedule 5, and paragraphs 1 and 3 of Schedule 8, to the Enterprise and Regulatory Reform Act 2013 and S.I. 2004/1079; there are other amendments to section 33 but none is relevant to these Regulations.
  - (c) Sections 34ZA to 34ZC were inserted by paragraphs 1 and 4 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.
  - (d) Section 34A was inserted by S.I. 2004/1079 and subsequently amended by paragraphs 59 and 73 of Schedule 5, and paragraphs 15 and 19 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2011/1043.
  - (e) Section 42 was amended by paragraphs 59 and 82 of Schedule 5, and paragraphs 15 and 21 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1079 and S.I. 2011/1043.
  - (f) Section 46 was amended by section 406(7) of, and Schedule 19 to, the Communications Act 2003, paragraphs 59 and 86 of Schedule 5 to, and paragraphs 15 and 22 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013 and S.I. 2004/1079.

(b) omit subsection (1A).

**44.** Omit sections 46A(a) and 46B (and the italic heading before section 46A).

**45.** In section 58(b)—

(a) in subsection (2), omit the words from “; and in this subsection” to the end;

(b) in subsection (2D), omit the words from “(other than” to the end.

**46.** In section 59(6)(c)(c), omit “, (6) and (8)”.

**47.** Omit sections 67(d) and 68(e) (and the italic heading before section 67).

**48.** In section 73A(1)(f), omit paragraph (b) and the “or” before it.

**49.** In section 99(5)—

(a) at the end of paragraph (b), insert “or”;

(b) omit paragraph (d)(g) and the “or” before it.

**50.** In section 107(1)(h), omit paragraphs (ae), (af), (ag) and (ah).

**51.**—(1) Section 110B(i) is amended as follows.

(2) In subsection (1), omit paragraph (e).

(3) In subsection (2), omit paragraph (e).

(4) In subsection (3), omit paragraph (d).

(5) In subsection (4), omit paragraph (d).

**52.** Omit section 122(j).

**53.**—(1) Section 124(k) is amended as follows.

(2) In subsection (4), omit “68,”.

(3) In subsection (5), for “, 59(5) and 67(7)” substitute “and 59(5)”.

(4) In subsection (6), omit “68,”.

**54.** In section 129(1)(l)—

(a) omit the definition of “EU law”;

(b) omit the definition of “the EC Merger Regulation”.

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- (a) Sections 46A and 46B were inserted by S.I. 2004/1079 and subsequently amended by paragraphs 59 and 87 of Schedule 5, and paragraphs 15 and 23 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2011/1043.
- (b) Section 58(2) was amended by S.I. 2004/1079 and subsection (2D) of that section was inserted by S.I. 2008/2645; there are other amendments to section 58 but none is relevant to these Regulations.
- (c) Section 59(6) was amended by paragraphs 59 and 101 of Schedule 5, and paragraphs 15 and 26 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013; there are other amendments to section 59 but none is relevant to these Regulations.
- (d) Section 67 was amended by paragraph 16 of Schedule 16 to, and section 406(7) of, and Schedule 19 to, the Communications Act 2003, paragraphs 59 and 110 of Schedule 5, and paragraphs 15 and 28 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, S.I. 2004/1079 and S.I. 2011/1043.
- (e) Section 68 was amended by paragraph 17 of Schedule 16 to, and section 406(7) of, and Schedule 19 to, the Communications Act 2003, paragraphs 59 and 111 of Schedule 5, and paragraphs 15 and 29 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2004/1079 and S.I. 2011/1043.
- (f) Section 73A was inserted by paragraphs 1 and 7 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.
- (g) Section 99(5) was amended by paragraphs 59 and 133 of Schedule 5, paragraphs 1 and 8 of Schedule 8, and paragraphs 15 and 35 of Schedule 15, to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2004/1079.
- (h) Paragraphs (ae), (af), (ag) and (ah) were inserted by paragraphs 15 and 36 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013; there are other amendments to section 107(1) but none is relevant to these Regulations.
- (i) Section 110B was inserted by section 29(11) of the Enterprise and Regulatory Reform Act 2013.
- (j) Section 122 was amended by S.I. 2004/1079, S.I. 2011/1043 and paragraphs 59 and 157 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
- (k) Section 124 was amended by paragraph 24 of Schedule 16 to the Communications Act 2003, section 31 of, and paragraphs 1 and 13 of Schedule 8 to, the Enterprise and Regulatory Reform Act 2013.
- (l) The definition of “the EC Merger Regulation” was inserted by S.I. 2004/1079 and the definition of “EU law” was amended by S.I. 2011/1043; there are other amending instruments, but none is relevant to these Regulations.

- 55.** In section 130(a), in the table—
- (a) omit the entry for “EU law”;
  - (b) omit the entry for “EC Merger Regulation”;
  - (c) in the entry for “Public interest consideration”, in the second column, for “Sections 42(3) and 67(9)” substitute “Section 42(3)”.
- 56.** In section 153(2)(b), omit the words from “; and in this subsection” to the end.
- 57.** In section 171(c), omit subsections (6) and (11).
- 58.** Omit section 209(d).
- 59.** Omit section 240(e).

## PART 4

### Amendment of other primary legislation

- 60.** Schedule 1 (which amends other primary legislation) has effect.

## PART 5

### Amendment of subordinate legislation

- 61.** Schedule 2 (which amends subordinate legislation) has effect.

## PART 6

### Amendment of retained EU law

#### Cessation of Treaty Rights and Obligations

- 62.** Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—
- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
  - (b) are derived from Articles 101, 102, 106(1) or 106(2) of the Treaty of the Functioning of the European Union or from Articles 53, 54, 57(1), 59(1) or 59(2) of the EEA Agreement

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) on the coming into force of these Regulations.

#### Amendment of retained direct EU legislation

- 63.** In Schedule 3—
- (a) Part 1 revokes certain retained direct EU legislation;
  - (b) Part 2 amends certain retained EU Regulations.

- 
- (a) The entry for “EC Merger Regulation” was inserted by S.I. 2004/1079 and the entry for “EU law” was amended by S.I. 2011/1043; there are other amendments to section 130 but none is relevant to these Regulations.
  - (b) Section 153(2) was amended by S.I. 2004/1079.
  - (c) Section 171(6) was amended by paragraphs 59 and 201 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2011/1043; subsection (11) of that section was also amended by S.I. 2011/1043.
  - (d) Section 209 was amended by S.I. 2011/1043 and S.I. 2012/1809.
  - (e) Section 240 was amended by S.I. 2011/1043.

## PART 7

### Saving and transitional provision

64. Schedule 4 (which makes saving and transitional provision) has effect.

We consent to the making of these Regulations

17th January 2019

*Rebecca Harris*  
*Paul Maynard*

Two of the Lords Commissioners of Her Majesty's Treasury

22nd January 2019

*Kelly Tolhurst*  
Minister for Small Business, Consumers and Corporate Responsibility  
Department for Business, Energy and Industrial Strategy

## SCHEDULE 1

Regulation 60

### Amendment of other primary legislation

#### **Company Directors Disqualification Act 1986**

1.—(1) Section 9A of the Company Directors Disqualification Act 1986(a) is amended as follows.

(2) In subsection (4)—

- (a) for “any of the following” substitute “either of the following”;
- (b) omit paragraphs (c) and (d).

(3) In subsection (8), omit “or (c)”.

(4) In subsection (11), for the words from “Section 60” to “law)” substitute “Section 60A of the Competition Act 1998 (certain principles etc to be considered or applied from exit day)”.

#### **Gas Act 1986**

2.—(1) Section 36A(3) of the Gas Act 1986(b) is amended as follows.

- (2) At the end of paragraph (a), insert “or”.
- (3) Omit paragraphs (c) and (d).

---

(a) 1986 c. 46; section 9A was inserted by section 204(1) and (2) of the Enterprise Act 2002 and subsequently amended by S.I. 2012/1809.

(b) 1986 c. 44; section 36A was inserted by paragraph 43 of Schedule 3 to the Gas Act 1995 (c. 45); subsection (3) was substituted by section 54(2) and paragraph 3(5) of Schedule 10 to the Competition Act 1998 (c. 41), further substituted by S.I. 2004/1261, and subsequently amended paragraph 2 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2014/892.

### **Electricity Act 1989**

- 3.—(1) Section 43(3) of the Electricity Act 1989(a) is amended as follows.
- (2) At the end of paragraph (a), insert “or”.
- (3) Omit paragraphs (c) and (d).

### **Water Industry Act 1991**

- 4.—(1) Section 31(3) of the Water Industry Act 1991(b) is amended as follows.
- (2) At the end of paragraph (a), insert “or”.
- (3) Omit paragraphs (c) and (d).

### **Electricity (Northern Ireland) Order 1992**

- 5.—(1) Article 46(3) of the Electricity (Northern Ireland) Order 1992(c) is amended as follows.
- (2) At the end of sub-paragraph (a), insert “or”.
- (3) Omit sub-paragraphs (c) and (d).

### **Railways Act 1993**

- 6.—(1) Section 67(3) of the Railways Act 1993(d) is amended as follows.
- (2) At the end of paragraph (a), insert “or”.
- (3) Omit paragraphs (c) and (d).

### **Gas (Northern Ireland) Order 1996**

- 7.—(1) Article 23(3) of the Gas (Northern Ireland) Order 1996(e) is amended as follows.
- (2) At the end of sub-paragraph (a), insert “or”.
- (3) Omit sub-paragraphs (c) and (d).

### **Financial Services and Markets Act 2000**

- 8.—(1) Section 234J(2) of the Financial Services and Markets Act 2000(f) is amended as follows.
- (2) At the end of paragraph (a), insert “and”.
- (3) Omit paragraphs (c) and (d).

- 
- (a) 1989 c. 29; section 43(3) was substituted by section 54(2) and paragraph 4(5) of Schedule 10 to the Competition Act 1998 (c.41), further substituted by S.I. 2004/1261, and subsequently amended by section 147(1) and (5) of the Energy Act 2004 (c. 20), paragraph 3 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2012/1809 and S.I. 2014/892.
  - (b) 1991 c. 56; section 31(3) was substituted by S.I. 2004/1261 and subsequently amended by section 36(3) of the Water Act 2003 (c.37), paragraphs 4 and 5 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2012/1809 and S.I. 2014/892.
  - (c) S.I. 1992/231 (N.I. 1); relevant amending instruments are S.I. 2004/1261, 2014/892, S.R. 2011 No. 155, and paragraph 53 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.
  - (d) 1993 c. 43; section 67(3) was substituted by section 54(2) and paragraph 6(5) of Schedule 10 to the Competition Act 1998, further substituted by S.I. 2004/1261, and subsequently amended by paragraph 7 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809, S.I. 2014/892 and S.I. 2015/1682.
  - (e) S.I. 1996/275 (N.I. 2); relevant amending instruments are S.I. 2004/1261, 2014/892, and paragraph 54 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.
  - (f) 2000 c. 8; section 234J was inserted by paragraphs 1 and 3 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33) and subsection (2) of section 234J is to be amended by section 27 of the Financial Guidance and Claims Act 2018 (c. 10) from a date to be appointed.

## **Transport Act 2000**

- 9.**—(1) The Transport Act 2000(a) is amended as follows.
- (2) In section 86(3)(b)—
- (a) at the end of paragraph (a), insert “or”;
  - (b) omit paragraphs (c) and (d).
- (3) In Schedule 9(c)—
- (a) in paragraph 3(1), omit paragraph (k);
  - (b) in paragraph 3(3), omit paragraph (s).
- (4) In Schedule 10, in paragraph 23(2)(a)(d), for “and 11” substitute “and 10A”.

## **Company Directors Disqualification (Northern Ireland) Order 2002**

- 10.**—(1) Article 13A of the Company Directors Disqualification (Northern Ireland) Order 2002(e) is amended as follows.
- (2) In paragraph (4)—
- (a) for “any of the following” substitute “either of the following”;
  - (b) omit sub-paragraphs (c) and (d).
- (3) In paragraph (8), omit “or (c)”.
- (4) In paragraph (11), for the words from “Section 60” to “law)” substitute “Section 60A of the Competition Act 1998 (certain principles etc to be considered or applied from exit day)”.

## **Communications Act 2003**

- 11.**—(1) The Communications Act 2003(f) is amended as follows.
- (2) In section 371(2)(g)—
- (a) at the end of paragraph (a), insert “or”;
  - (b) omit paragraphs (c) and (d).
- (3) Paragraph 6 of Schedule 11(h) is amended as follows.
- (4) In sub-paragraph (6), at the beginning insert “Subject to paragraph 6A,”.
- (5) In sub-paragraph (7)(a)—
- (a) after “European Court” insert “before exit day”, and
  - (b) for “of that court” substitute “made by that court before exit day”.
- (6) After sub-paragraph (7) insert—
- “(7A) In sub-paragraph (7)(a), the reference to principles laid down before exit day is a reference to such principles as they have effect in EU law immediately before exit day, disregarding the effect of principles laid down, and decisions made, by the European Court on or after exit day.”.
- (7) After that paragraph insert—

- 
- (a) 2000 c. 38.
- (b) Section 86(3) was substituted by S.I. 2004/1261 and subsequently amended by paragraph 14 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2012/1809 and S.I. 2014/892.
- (c) Paragraph 3(1)(k) and (3)(s) of Schedule 9 were amended by S.I. 2011/1043; there are other amendments to paragraph 3(1) and (3) but none is relevant to these Regulations.
- (d) Part 2 of Schedule 10 was inserted by paragraphs 1 and 15 of Schedule 2 to the Local Transport Act 2008 (c. 26) and paragraph 23 was subsequently amended by S.I. 2017/385.
- (e) S.I. 2002/3150 (N.I. 4); article 13A was inserted by S.I. 2005/1454 (N.I. 9) and subsequently amended by S.I. 2014/892.
- (f) 2003 c. 21.
- (g) Section 371(2) was substituted by S.I. 2004/1261, and subsequently amended by paragraphs 42 and 46 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809 and S.I. 2014/892.
- (h) Paragraph 6 of Schedule 11 was amended by S.I. 2012/1809 and S.I. 2014/892.

### **“Competition tests applying to OFCOM’s decisions: EU principles etc**

**6A.**—(1) Paragraph 6(6) does not require OFCOM to secure that there is no inconsistency with a principle or decision referred to in paragraph 6(7)(a)—

- (a) so far as the principle or decision is excluded from the law of England and Wales, Scotland and Northern Ireland on or after exit day, or
- (b) so far as doing so would be incompatible with OFCOM’s duty to secure that there is no inconsistency with a decision referred to in paragraph 6(7)(b).

(2) For the purposes of sub-paragraph (1)(a), a principle or decision is to be treated as not excluded from the law of England and Wales, Scotland and Northern Ireland if it is excluded only by virtue of an exclusion or revocation in the Competition (Amendment etc.) (EU Exit) Regulations 2019.

(3) Paragraph 6(6) does not require OFCOM to secure that there is no inconsistency with a principle or decision referred to in paragraph 6(7)(a) if OFCOM think that it is appropriate to act otherwise in the light of one or more of the following—

- (a) differences between the competition tests and Article 101 of the Treaty on the Functioning of the European Union as it had effect immediately before exit day;
- (b) differences between markets in the United Kingdom and markets in the European Union;
- (c) developments in forms of economic activity since the time when the principle or decision referred to in paragraph 6(7)(a) was laid down or made;
- (d) generally accepted principles of competition analysis or the generally accepted application of such principles;
- (e) a principle laid down, or decision made, by the European Court on or after exit day;
- (f) the particular circumstances under consideration.”.

### **Water and Sewerage Services (Northern Ireland) Order 2006**

**12.**—(1) Article 29(3) of the Water and Sewerage Services (Northern Ireland) Order 2006(a) is amended as follows.

- (2) At the end of sub-paragraph (a), insert “or”.
- (3) Omit sub-paragraphs (c) and (d).

### **Health and Social Care Act 2012**

**13.** In section 72(2) of the Health and Social Care Act 2012(b), omit paragraphs (c) and (d).

### **Civil Aviation Act 2012**

**14.**—(1) The Civil Aviation Act 2012(c) is amended as follows.

(2) In section 6—

- (a) omit subsection (9)(a);
- (b) omit subsection (10)(a);
- (c) in subsection (10)(b), omit “and Articles 101 and 102 of the TFEU”;
- (d) omit subsection (11).

---

(a) S.I. 2006/3336 (N.I. 21), amended by S.I. 2014/892; there are other amending instruments but none is relevant.

(b) 2012 c. 7; section 72(2) was amended by paragraphs 47 and 48 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2014/892.

(c) 2012 c. 19.

- (3) In section 62(3)—
  - (a) at the end of paragraph (a), insert “or”;
  - (b) omit paragraphs (c) and (d).

### **Financial Services (Banking Reform) Act 2013**

**15.**—(1) Section 61(2) of the Financial Services (Banking Reform) Act 2013(a) is amended as follows.

- (2) At the end of paragraph (a), insert “and”.
- (3) Omit paragraphs (c) and (d).

## SCHEDULE 2

Regulation 61

### Amendment of subordinate legislation

#### PART 1

Amendment of subordinate legislation made under the Competition Act 1998

### **Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000**

**1.**—(1) The Schedule to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000(b) is amended as follows.

- (2) In paragraph 1—
  - (a) in the definition of “financial institution”, for “EEA” substitute “United Kingdom”;
  - (b) for the definition of “insurance undertaking” substitute—
    - ““insurance undertaking” means—
    - (a) an insurance undertaking carrying on the business of direct insurance of a class set out in Article 2 of, or Annex 1 to, Directive 2009/138/EC of the European Parliament and Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(c);
    - (b) a reinsurance undertaking; or
    - (c) a third-country reinsurance undertaking;”;
  - (c) omit the “and” at the end of the definition of “insurance undertaking” and after that definition insert—
    - ““reinsurance undertaking” means an undertaking which—
    - (a) has its head office in the United Kingdom;
    - (b) has permission under Part 4A of the Financial Services and Markets Act 2000(d) to carry on one or more regulated activities;
    - (c) effects or carries out contracts of insurance that are limited to reinsurance contracts; and

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(a) 2013 c. 33.

(b) S.I. 2000/262; relevant amending instruments are S.I. 2013/3115 and 2015/575.

(c) O.J. L 335, 17.12.2009, p. 1, as last amended by Directive (EU) 2018/843 (O.J. L 156, 19.6.2018).

(d) Part 4A of the Financial Services and Markets Act 2008 ((sections 55A–55Z, 55Z1–55Z4) was substituted for Part IV (sections 40–55) by section 11(2) of the Financial Services Act 2012; there are amendments to Part 4A but none is relevant to these Regulations.



- (d) would require authorisation in accordance with Article 14 of Directive 2009/138/EC, if the United Kingdom were a Member State;
- “third-country reinsurance undertaking” means an undertaking which, if its head office were in the United Kingdom—
- (a) would require permission under Part 4A of the Financial Services and Markets Act 2000 to carry out regulated activities relating to reinsurance; and
  - (b) immediately before exit day, would have required authorisation as a reinsurance undertaking in accordance with Article 14 of Directive 2009/138/EC; and”.

**Competition Act 1998 (Determination of Turnover for Penalties) Order 2000**

**2.**—(1) The Schedule to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000(a) is amended as follows.

(2) In paragraph 1—

- (a) in the definition of “financial institution”, for “EEA” substitute “United Kingdom”;
- (b) for the definition of “insurance undertaking” substitute—

““insurance undertaking” means—

- (a) an insurance undertaking carrying on the business of direct insurance of a class set out in Article 2 of, or Annex 1 to, Directive 2009/138/EC of the European Parliament and Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);
  - (b) a reinsurance undertaking; or
  - (c) a third-country reinsurance undertaking;”;
- (c) omit the “and” at the end of the definition of “insurance undertaking” and after that definition insert—

““reinsurance undertaking” means an undertaking which—

- (a) has its head office in the United Kingdom;
- (b) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on one or more regulated activities;
- (c) effects or carries out contracts of insurance that are limited to reinsurance contracts; and
- (d) would require authorisation in accordance with Article 14 of Directive 2009/138/EC, if the United Kingdom were a Member State;

“third-country reinsurance undertaking” means an undertaking which, if its head office were in the United Kingdom—

- (a) would require permission under Part 4A of the Financial Services and Markets Act 2000 to carry out regulated activities relating to reinsurance; and
- (b) immediately before exit day, would have required authorisation as a reinsurance undertaking in accordance with Article 14 of Directive 2009/138/EC; and”.

**Competition Act 1998 (Appealable Decisions and Revocation of Notification of Excluded Agreements) Regulations 2004**

**3.**—(1) The Competition Act 1998 (Appealable Decisions and Revocation of Notification of Excluded Agreements) Regulations 2004(b) are amended as follows.

(2) In regulation 2, for “parallel exemption” in both places it occurs substitute “retained exemption”.

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(a) S.I. 2000/309; relevant amending instruments are S.I. 2004/1259, 2013/3115 and 2015/575.

(b) S.I. 2004/1078; amended by S.I. 2014/549.

## Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014

4.—(1) The Schedule to the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014(a) is amended as follows.

(2) In rule 1—

(a) for the definition of “infringement decision” substitute—

““infringement decision” means a decision of the CMA that the Chapter I prohibition or the Chapter II prohibition has been infringed;”;

(b) in the definition of “notice”—

(i) at the end of paragraph (b), insert “or”;

(ii) omit paragraph (d) and the “or” before it.

(3) In rule 2—

(a) in paragraph (1)—

(i) omit “Subject to paragraphs (2) and (3),”;

(ii) for the words from “any one or more” to the end substitute “the Chapter I prohibition or the Chapter II prohibition.”;

(b) omit paragraphs (2) and (3).

(4) In rule 4—

(a) in paragraph (2), omit “or section 65E(6)(a)(ii) or (b)”;

(b) in paragraph (5)—

(i) omit “or 65F(1)”;

(ii) for “, 28A, 65G or 65H” substitute “or 28A”.

(5) In rule 5—

(a) in paragraph (1), for “one or more” substitute “either or both”;

(b) in paragraph (2), for the words from “which one” to “considers” substitute “whether it considers the Chapter I prohibition or the Chapter II prohibition or both”;

(c) in paragraph (3), omit “or the prohibition in Article 101(1)”.

(6) In rule 9(1)(a), for the words from “one or more of” to “Article 102” substitute “the Chapter I prohibition or the Chapter II prohibition”.

(7) In rule 10—

(a) in paragraph (2), omit “or the prohibition in Article 101(1)”;

(b) in paragraph (4)—

(i) omit sub-paragraph (b) and the “or” at the end;

(ii) in sub-paragraph (c) omit “or the prohibition in Article 102”.

(8) In rule 11(a), for the words from “which one” to “considers” substitute “whether it considers the Chapter I prohibition or the Chapter II prohibition or both”.

(9) In rule 14—

(a) in paragraph (1), for the words from “to a case” to “Article 102” substitute “the Chapter I prohibition or the Chapter II prohibition to a case”;

(b) omit paragraphs (2) to (4).

(10) In rule 15, in paragraph (1) and in the heading, for “parallel exemption” substitute “retained exemption”.

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(a) S.I. 2014/458.

- (11) Omit rule 16.
- (12) In rule 19—
  - (a) in paragraph (1)(a) omit “, 16(1) 16(3)(a)”;
  - (b) in paragraph (1)(b) omit “, 16(1), 16(3)(a)”.

#### **Competition Act 1998 (Concurrency) Regulations 2014**

- 5.**—(1) The Competition Act 1998 (Concurrency) Regulations 2014(a) are amended as follows.
- (2) In regulation 3—
  - (a) at the end of paragraph (a), insert “or”;
  - (b) omit paragraphs (c) and (d).
- (3) In regulation 9(1)(a)—
  - (a) at the end of paragraph (i), insert “or”;
  - (b) omit paragraphs (iii) and (iv).
- (4) In regulation 9(1)(g), for “parallel exemption” substitute “retained exemption”.

## **PART 2**

### Amendment of subordinate legislation made under the Enterprise Act 2002

#### **Enterprise Act 2002 (Anticipated Mergers) Order 2003**

- 6.**—(1) The Enterprise Act 2002 (Anticipated Mergers) Order 2003(b) is amended as follows.
- (2) In article 2, in the definition of “notice”, for “, 59(2) or 67(2)” substitute “or 59(2)”.

#### **Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014**

- 7.**—(1) The Schedule to the Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014(c) is amended as follows.
- (2) In paragraph 1(1), in the definition of “financial institution”—
  - (a) for “EU” substitute “United Kingdom”;
  - (b) omit the “and” at the end;
- (3) In paragraph 1(1), in the definition of “insurance undertaking”—
  - (a) in paragraphs (a) and (b), for “European Economic Area” substitute “United Kingdom”;
  - (b) omit the “or” at the end of paragraph (b); and
  - (c) for paragraph (c) substitute—
    - “(c) a reinsurance undertaking; or
    - (d) a third-country reinsurance undertaking;”.
- (4) In paragraph 1(1), after the definition of “insurance undertaking” insert—
  - ““reinsurance undertaking” means an undertaking which—
    - (a) has its head office in the United Kingdom;
    - (b) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on one or more regulated activities;

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(a) S.I. 2014/536.  
(b) S.I. 2003/1595, to which there is an amendment not relevant to these Regulations.  
(c) S.I. 2014/533, as amended by S.I. 2015/575.

- (c) effects or carries out contracts of insurance that are limited to reinsurance contracts; and
  - (d) would require authorisation in accordance with Article 14 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), if the United Kingdom were a Member State; and
- “third-country reinsurance undertaking” means an undertaking which, if its head office were in the United Kingdom—
- (a) would require permission under Part 4A of the Financial Services and Markets Act 2000 to carry out regulated activities relating to reinsurance; and
  - (b) immediately before exit day, would have required authorisation as a reinsurance undertaking in accordance with Article 14 of Directive 2009/138/EC.”.

### **Competition Appeal Tribunal Rules 2015**

- 8.**—(1) The Competition Appeal Tribunal Rules 2015(a) are amended as follows.
- (2) In rule 2, paragraph (1), omit the definition of “TFEU”.
  - (3) In rule 50(2), omit “Article 101 or 102 of the TFEU or”.
  - (4) Omit rule 59(5)(a)(ii) and the “but” before it.
  - (5) Omit rule 109.
  - (6) In rule 110(1), omit paragraph (m).

## **PART 3**

### **Amendment of other subordinate legislation**

#### **EEC Merger Control (Distinct Market Investigations) Regulations 1990**

- 9.** The EEC Merger Control (Distinct Market Investigations) Regulations 1990(b) are revoked.

#### **Restriction on Agreements and Conduct (Specified Domestic Electrical Goods) Order 1998**

- 10.**—(1) Article 12 of the Restriction on Agreements and Conduct (Specified Domestic Electrical Goods) Order 1998(c) is amended as follows.
- (2) In paragraph (2), for the words from “pursuant” to the end substitute—
    - “the agreement is exempt from the Chapter 1 prohibition as a result of—
    - (a) section 9 of the Competition Act 1998; or
    - (b) a block exemption or a retained exemption.”.
  - (3) Omit paragraph (3).
  - (4) In paragraph (4)—
    - (a) in the definition of “agreement” for “within the meaning of Article 85.1” substitute “and those expressions have the same meaning as they do for the purposes of the Competition Act 1998”;
    - (b) omit the definition of “Article 85.1” and “Article 85.3”;
    - (c) in the appropriate place insert—

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(a) S.I. 2015/1648.

(b) S.I. 1990/1715, as amended by S.I. 2003/1398, S.I. 2004/1079 and S.I. 2014/549.

(c) S.I. 1998/1271; there are amending instruments, but none is relevant to these Regulations.

“the Chapter 1 prohibition” has the meaning given by section 2(8) of the Competition Act 1998;

“block exemption” has the meaning given by section 6(4) of the Competition Act 1998;

“retained exemption” has the meaning given by section 10(3) of the Competition Act 1998.”.

(5) For the heading substitute “Part 1 of the Competition Act 1998”.

#### **Competition Act 1998 and other Enactments (Amendment) Regulations 2004**

**11.**—(1) The Competition Act 1998 and other Enactments (Amendment) Regulations 2004(a) are amended as follows.

(2) In regulation 2, omit the definition of “the EC Competition Regulation”.

(3) Omit regulation 3.

#### **Water Mergers (Modification of Enactments) Regulations 2004**

**12.**—(1) The Water Mergers (Modification of Enactments) Regulations 2004(b) are amended as follows.

(2) In regulation 3(1)—

(a) omit sub-paragraph (b);

(b) in sub-paragraph (d), for “to 68” substitute “to 66”.

(3) In regulation 5—

(a) insert “and” at the end of paragraph (aa);

(b) omit paragraphs (b) and (d);

(4) In regulation 10ZA, in paragraph (d), for “subsections (4) and (5)” substitute “subsection 4”.

(5) Omit regulations 10ZB and 10ZC.

(6) In regulation 17A(a), omit sub-paragraph (ii).

(7) In regulation 29(a), omit sub-paragraph (iv).

(8) In regulation 30B—

(a) in paragraph (a)—

(i) insert “and” at the end of sub-paragraph (i);

(ii) omit sub-paragraph (iii) and the “and” before it;

(b) in paragraph (b), omit sub-paragraph (ii) (together with the final “and”).

(9) Omit regulation 33.

#### **Designation of the Competition and Markets Authority as a National Competition Authority Regulations 2014**

**13.** The Designation of the Competition and Markets Authority as a National Competition Authority Regulations 2014(c) are revoked.

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(a) S.I. 2004/1261; relevant amending instruments are S.I. 2012/1809 and S.I. 2014/549.

(b) S.I. 2004/3202, relevant amending instruments are S.I. 2011/1043, S.I. 2014/549 and S.I. 2015/1936.

(c) S.I. 2014/537.

## Amendment of retained direct EU legislation

## PART 1

## Revocation of retained direct EU legislation

**1.** The following instruments are revoked—

- (a) Council Regulation (EEC) 17/62: First Regulation implementing Articles 85 and 86 of the Treaty;
- (b) Council Regulation (EEC) 19/65 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices;
- (c) Council Regulation (EEC) 2821/71 on the application of Article 85(3) of the Treaty to categories of agreements, decisions and concerted practices;
- (d) Council Regulation (EEC) No 2988/74 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition;
- (e) Council Regulation (EEC) 1534/91 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector;
- (f) Council Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;
- (g) Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings;
- (h) Council Regulation (EC) 246/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia);
- (i) Council Regulation (EC) 487/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector;
- (j) Annex 14 to the EEA Agreement insofar as it forms part of domestic law on and after exit day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018.

**2.** EU decisions and EU regulations made by the European Commission under the instruments revoked by paragraph 1 (as they form part of domestic law on and after exit day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018) are revoked, with the exception of EU regulations made by the European Commission under the EU regulations specified in paragraph 1(b), (c) and (h).

## PART 2

## Amendment of retained EU Regulations

**Council Regulation (EC) 169/2009**

**3.—**(1) Council Regulation (EC) No 169/2009 applying rules of competition to transport by rail, road and inland waterway is amended as follows.

(2) In Article 2—

- (a) in paragraph 1, for “in Article 81(1) of the Treaty” substitute “imposed by section 2(1) of the Competition Act 1998”;
- (b) omit paragraph 2.

(3) In Article 3—

(a) in paragraph 1, for the words from “Article 81(1)” to “that Article” substitute “section 2(1) of the Competition Act 1998 are exempt from the prohibition imposed by that provision”;

(b) omit paragraph 2.

(4) Omit Article 5(2).

(5) In the words after Article 5, omit the words from “This Regulation shall be binding” to “Member States.”.

#### **Commission Regulation (EC) 906/2009**

**4.**—(1) Commission Regulation (EC) 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) is amended as follows.

(2) In Article 1, for “Community ports” substitute “ports in the United Kingdom”.

(3) In Article 2, after paragraph 3 insert—

“3A. “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;”.

(4) In Article 3, for the words before paragraph 1 substitute—

“Subject to the provisions of this Regulation, the following activities of a consortium are exempt from the Chapter 1 prohibition:”.

(5) In the words after Article 7, omit the words from “This Regulation shall be binding” to “Member States.”.

#### **Commission Regulation (EU) 330/2010**

**5.**—(1) Commission Regulation (EU) 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices is amended as follows.

(2) In Article 1(1)—

(a) after point (a), insert—

“(aa) “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;”;

(b) in point (b), for “Article 101(1) of the Treaty” substitute “the Chapter 1 prohibition”;

(c) after point (c), insert—

“(ca) “retained block exemption regulation” has the meaning given in section 10(10) of the Competition Act 1998;

(cb) “block exemption order” has the meaning given in section 6 of the Competition Act 1998;”;

(d) in point (h), for “Article 101(1) of the Treaty” substitute “the Chapter 1 prohibition”.

(3) In Article 2—

(a) in paragraph 1, for the first subparagraph substitute—

“Subject to the provisions of this Regulation, vertical agreements are exempt from the Chapter 1 prohibition.”;

(b) in paragraph 2—

(i) for “EUR 50 million” substitute “£44 million”;

(ii) for “Article 101 of the Treaty” substitute “the Chapter 1 prohibition”;

- (c) in paragraph 5, for the words from “block exemption regulation” to the end substitute “retained block exemption regulation or of any block exemption order, unless otherwise provided for in such a regulation or order”.
- (4) Omit Articles 6 and 9.
- (5) In the words after Article 10, omit the words from “This Regulation shall be binding” to “Member States.”.

**Commission Regulation (EU) 461/2010**

6.—(1) Commission Regulation (EU) 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector is amended as follows.

- (2) In Article 1(1)—
  - (a) after point (a), insert—
    - “(aa) “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;”;
  - (b) in point (b), for “Article 101(1) of the Treaty” substitute “the Chapter 1 prohibition”.
- (3) Omit Article 2.
- (4) For the first paragraph of Article 4 substitute—
  - “Subject to the provisions of this Regulation, a vertical agreement is exempt from the Chapter 1 prohibition if—
    - (a) it relates to the conditions under which the parties may purchase, sell or resell spare parts for motor vehicles or provide repair and maintenance services for motor vehicles;
    - (b) it fulfils the requirements for an exemption under Regulation (EU) No. 330/2010; and
    - (c) it does not contain any of the hardcore clauses listed in Article 5 of this Regulation.”.
- (5) Omit Articles 6 and 7.
- (6) In the words after Article 8, omit the words from “This Regulation shall be binding” to “Member States.”.

**Commission Regulation (EU) 1217/2010**

7.—(1) Commission Regulation (EU) 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements is amended as follows.

- (2) In Article 1(1), after point (q), insert—
  - “(ra)“the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;”.
- (3) In Article 2(1)—
  - (a) for the first subparagraph substitute—
    - “Subject to the provisions of this Regulation, research and development agreements are exempt from the Chapter 1 prohibition.”;
  - (b) in the second subparagraph, for “Article 101(1) of the Treaty” substitute “the Chapter 1 prohibition”.
- (4) In Article 4(1), for “internal market” substitute “United Kingdom”.
- (5) In Article 5, in points (f) and (g), for “internal market” substitute “United Kingdom”;
- (6) In Article 6—
  - (a) in point (a), for “which the parties hold in the internal market” (in both places it occurs) substitute “held by the parties which have effect in the United Kingdom”;



- (b) in point (b), for “internal market” substitute “United Kingdom”.
- (7) Omit Article 8.
- (8) In the words after Article 9, omit the words from “This Regulation shall be binding” to “Member States.”.

#### **Commission Regulation (EU) 1218/2010**

**8.**—(1) Commission Regulation (EU) 1218/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements is amended as follows.

- (2) In Article 1(1), after point (h), insert—
  - “(ha) “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;”.
- (3) In Article 2(1)—
  - (a) for the first subparagraph substitute—

“Subject to the provisions of this Regulation, specialisation agreements are exempt from the Chapter 1 prohibition.”;
  - (b) in the second subparagraph, for “Article 101(1) of the Treaty” substitute “the Chapter 1 prohibition”.
- (4) Omit Article 6.
- (5) In the words after Article 7, omit the words from “This Regulation shall be binding” to “Member States.”.

#### **Commission Regulation (EU) 316/2014**

**9.**—(1) Commission Regulation (EU) 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements is amended as follows.

- (2) In Article 1(1), after point (c), insert—
  - “(ca) “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;”.
- (3) In Article 2—
  - (a) for paragraph 1 substitute—

“Subject to the provisions of this Regulation, technology transfer agreements are exempt from the Chapter 1 prohibition.”;
  - (b) in paragraph 2, for “Article 101(1) of the Treaty” substitute “the Chapter 1 prohibition”.
- (4) In Article 5(1), in point (b), for “which the other party holds in the Union” substitute “held by the other party which have effect in the United Kingdom”.
- (5) Omit Articles 6, 7 and 10.
- (6) In the words after Article 11, omit the words from “This Regulation shall be binding” to “Member States.”.

#### **Effect of certain revocations**

**10.**—(1) The revocation of the provisions of Commission Regulations listed in sub-paragraph (2) is not to be read as—

- (a) preventing the Secretary of State from exercising the power under section 10A(1) of the Competition Act 1998(a) to disapply those Regulations as described in those provisions, or
- (b) limiting that power in any other way.

(2) Those provisions are—

- (a) Article 6 of Commission Regulation (EU) 330/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices;
- (b) Article 6 of Commission Regulation (EU) 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector;
- (c) Article 7 of Commission Regulation (EU) 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements.

(3) The revocation of Article 6 of Commission Regulation (EU) 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements is not to be read as—

- (a) preventing the Competition and Markets Authority from exercising its power under section 10(5) of the Competition Act 1998 to impose conditions or obligations subject to which an exemption is to have effect or to cancel the exemption for an agreement in the circumstances described in that Article, or
- (b) limiting that power in any other way.

## SCHEDULE 4

Regulation 64

### Saving and transitional provision

#### PART 1

##### Interpretation

##### **Interpretation**

1. In this Schedule—

“the 1998 Act” means the Competition Act 1998;

“the 2002 Act” means the Enterprise Act 2002(b);

“the CMA” means the Competition and Markets Authority.

#### PART 2

##### Exemptions from the Chapter 1 prohibition

##### **Pre-existing agreements exempt by virtue of an EU decision**

2.—(1) This paragraph applies if—

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(a) 1998 c. 41; section 10A is inserted into the Competition Act 1998 by regulation 4 of these Regulations.

(b) 2002 c. 40.

- (a) immediately before exit day, an agreement is exempt from the Chapter 1 prohibition under section 10 of the 1998 Act by virtue of an EU decision<sup>(a)</sup>; and
  - (b) the decision (as it has effect in EU law) has not expired or been revoked under EU law.
- (2) On and after exit day, section 10 of the 1998 Act has effect in relation to the agreement without the modifications made by regulation 3(3), (4), (6)(c) and (8) of these Regulations.
- (3) In this paragraph—
- (a) “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the 1998 Act;
  - (b) references to an agreement include a reference to a decision by an association of undertakings and a concerted practice.
- (4) For the purposes of section 10 of the 1998 Act as it has effect by virtue of this paragraph, section 59 of that Act (interpretation) has effect without the modifications made by regulation 21(2).

### **Pre-existing research and development agreements**

- 3.—(1) Sub-paragraph (2) applies if—
- (a) a research and development agreement is entered into before exit day, and
  - (b) in relation to the agreement, the 7 year period specified in Article 4(1) of the EU R&D block exemption regulation begins before exit day.
- (2) On and after exit day, Article 4(1) of the retained R&D block exemption regulation has effect in relation to the agreement without the modification made by paragraph 7(4) of Schedule 3 to these Regulations.
- (3) Sub-paragraph (4) applies if—
- (a) a research and development agreement is entered into before exit day, and
  - (b) immediately before exit day, the agreement contains an obligation described in Article 6(b) of the EU R&D block exemption regulation.
- (4) On and after exit day, Article 6(b) of the retained R&D block exemption regulation has effect in relation to the agreement without the modification made by paragraph 7(6)(b) of Schedule 3 to these Regulations.
- (5) In this paragraph—
- “research and development agreement” has the same meaning as in the EU R&D block exemption regulation;
- “the R&D block exemption regulation” means Commission Regulation (EU) 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements;
- “the EU R&D block exemption regulation” means the R&D block exemption regulation as it has effect as part of EU law immediately before exit day;
- “the retained R&D block exemption regulation” means the R&D block exemption regulation as it has effect as part of domestic law on and after exit day.

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(a) Agreements exempt by virtue of an EU decision are subject to an existing saving provision under regulation 7 of S.I. 2004/1261.

## PART 3

### CMA investigations under Part 1 of the 1998 Act

#### Interpretation

**4.—**(1) In this Part of this Schedule—

“investigation” means an investigation under section 25 of the 1998 Act;

“domestic element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(2), (4) or (6) of the 1998 Act;

“EU element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(3), (5) or (7) of the 1998 Act;

(2) References in this Part of this Schedule to cases in which the CMA is conducting an investigation at a particular time include cases in which the CMA would be conducting such an investigation but for section 31B(2)(a) of the 1998 Act (suspension of investigation where commitments given under section 31A(b) of that Act).

(3) References in this Part of this Schedule to the CMA are to be read as including a reference to a regulator (as defined in section 54 of the 1998 Act(c)).

#### Termination of EU elements of on-going investigations

**5.** Where the CMA is conducting an investigation immediately before exit day, it may not continue any EU elements of the investigation on and after exit day.

**6.—**(1) This paragraph applies where, immediately before exit day, the CMA is conducting an investigation which has both domestic elements and EU elements.

(2) Anything done before exit day for the purposes of, or in connection with, the EU elements of the investigation is to be treated, on and after exit day, as done for the purposes of, or in connection with, the domestic elements of the investigation.

(3) The reference in sub-paragraph (2) to anything done includes anything omitted to be done.

(4) On and after exit day—

(a) a notice validly issued before exit day under section 26(d), 26A(e), or 27(f) of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued for the purposes of the domestic elements of the investigation;

(b) a warrant validly issued, or an application for a warrant made, before exit day under section 28(g) or 28A(h) of the 1998 Act for the purposes of the EU elements of the

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(a) Section 31B(2) was inserted by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(b) Section 31A was inserted by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(c) Section 54 was amended by paragraph 38(1) and (41) of Schedule 25 to the Enterprise Act 2002, section 371(5) of the Communications Act 2003, section 51(1) to (4) of, paragraphs 1 and 33 of Schedule 5 to, and paragraphs 8 and 11 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraph 32(1) and (2) of Schedule 7 to the Water Act 2003 (c. 37), section 74(5) of the Health and Social Care Act 2012, section 67(2) of and paragraph 9 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33), and by S.I. 2015/1682 and S.I. 2004/1261.

(d) Section 26 was amended by paragraphs 1 and 6 of Schedule 5 to, and paragraphs 8 and 9 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (20) of Schedule 25 to the Enterprise Act 2002, and S.I. 2004/1261.

(e) Section 26A was inserted by section 39 of the Enterprise and Regulatory Reform Act 2013.

(f) Section 27 was amended by paragraphs 1 and 7 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (21) of Schedule 25 to the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16) and S.I. 2004/1261.

(g) Section 28 was amended by paragraphs 1 and 2 of Schedule 13 to, and paragraphs 1 and 8 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013, section 203(1) and (2) of, and paragraphs 38(1) and (22) of Schedule 25 to, the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 and S.I. 2004/1261.

(h) Section 28A was inserted by S.I. 2004/1261 and amended by paragraphs 1 and 3 of Schedule 13 to, and paragraphs 1 and 9 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

investigation is to be treated as validly issued or made in connection with the domestic elements of the investigation;

- (c) documents and other information obtained, and representations made, before exit day for the purposes of, or in connection with, the EU elements of the investigation are to be treated as obtained or made for the purposes of, or in connection with, the domestic elements of the investigation; and
- (d) a commitment accepted under section 31A of the 1998 Act before exit day for the purposes of addressing a competition concern identified during the course of the EU elements of the investigation, and not released before exit day, continues in force until released.

(5) Sub-paragraph (4) is without prejudice to the generality of sub-paragraph (2).

(6) On and after exit day a notice given before exit day under section 31(1)(a) of the 1998 Act is to be treated as if any reference to a proposed decision described in section 31(2)(c) or (d) of the 1998 Act were omitted.

### **Completed investigations terminated by decisions under section 31(2)(c) or (d) of the 1998 Act**

**7.—**(1) This paragraph applies where, before exit day, the CMA has made a decision within the meaning of section 31(2)(c) or (d) of the 1998 Act.

(2) On and after exit day, in connection with the decision, the enactments mentioned in sub-paragraphs (3) to (8) have effect as described there.

(3) Part 1 of the 1998 Act has effect—

- (a) without the modifications made by Part 2 of these Regulations, other than the modifications made by regulations 21(3), 22 and 23 (principles to be applied in determining questions), and
- (b) with the further modifications set out in sub-paragraph (4).

(4) The further modifications mentioned in sub-paragraph (3)(b) are as follows—

- (a) references (however expressed) to a decision of the European Commission or a Member State competition authority that there has been an infringement of the prohibition in Article 101(1) or 102 of the Treaty on the Functioning of the European Union do not include a decision made on or after exit day;
- (b) paragraph 21(3) of Schedule 8A to the 1998 Act has effect as if—
  - (i) in sub-paragraph (a), after “if the competition authority makes a decision” there were inserted “before exit day”;
  - (ii) the “and” at the end of sub-paragraph (a) were omitted;
  - (iii) in sub-paragraph (b), for “otherwise” there were substituted “if the competition authority closes the investigation before exit day without making such a decision”;
  - and
  - (iv) after sub-paragraph (b) there were inserted—
    - “; and
    - (c) otherwise, at the end of the period of one year beginning with exit day.”.

(5) Section 16 of the 2002 Act(b) has effect without the modification made by regulation 33 of these Regulations.

(6) The enactments listed in paragraphs 2 to 9 and 11 to 15 of Schedule 1 to these Regulations and in paragraphs 11 and 13 of Part 3 of Schedule 2 to these Regulations have effect without the modifications made in those paragraphs.

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(a) Section 31(1) was amended by paragraphs 1 and 10 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(b) Section 16 was amended by paragraph 81(a) of Schedule 9 to the Crime and Courts Act 2013 (c. 22), paragraph 21 of Schedule 8 to the Consumer Rights Act 2015 and S.I. 2012/1809.

(7) Subordinate legislation made under Part 1 of the 1998 Act has effect without the modifications made by Part 1 of Schedule 2 to these Regulations, except for the modifications made by paragraph 4(4) of that Schedule (amendments to the Competition Act 1998 (Competition and Market Authority's Rules) Order 2014).

(8) The Competition Appeal Tribunal Rules 2015 have effect without the modifications made by paragraph 8 of Schedule 2 to these Regulations, except for the modifications made by sub-paragraphs (4), (5) and (6) of that paragraph.

(9) References in sub-paragraph (4)(a) to a decision by a Member State competition authority are to be interpreted in accordance with paragraph 3(6) of Schedule 8A to the 1998 Act (see paragraph (c) of that provision).

#### **Cases in which CMA relieved of competence by EU law**

**8.**—(1) This paragraph applies where, immediately before exit day—

- (a) the CMA has been relieved of competence in a case under Article 11(6) of Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty in relation to a case by the European Commission initiating proceedings;
- (b) the European Commission has reached a decision in the case under Chapter III of that Regulation; and
- (c) the decision has not been annulled in full or in part by the European Court.

(2) On and after exit day the CMA may not conduct an investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the agreement, decision, concerted practice or abuse of a dominant position with which that case was concerned.

(3) Sub-paragraph (2) ceases to have effect in any case where on or after exit day the European Commission's decision is annulled in full or in part by the European Court.

## **PART 4**

### **Inspections and investigations under Parts 2 and 2A of the 1998 Act**

**9.** On and after exit day—

- (a) the CMA and other persons may not take or continue any action for the purposes of, or in connection with, an Article 20 inspection, an Article 21 inspection or an Article 22(2) inspection (as defined in section 61 of the 1998 Act(**a**)) in reliance on Part 2 of the 1998 Act; and
- (b) the CMA may not continue an Article 22(1) investigation (as defined in section 65C(1) of the 1998 Act(**b**)).

**10.** A warrant issued and in force under section 62(1)(**c**), 62A(1)(**d**), 63(1)(**e**), 65G(1)(**f**) or 65H(1)(**g**) of the 1998 Act ceases to have effect on exit day.

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(a) Section 61 was amended by paragraphs 1 and 4 of Schedule 13 to, and paragraphs 1 and 40 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 and S.I. 2012/1809.

(b) Section 65C(1) was inserted by S.I. 2004/1261 and amended by paragraphs 1 and 45 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(c) Section 62(1) was amended by paragraphs 1 and 5 of Schedule 13 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2004/1261.

(d) Section 62A(1) was inserted by S.I. 2004/1261 and amended by paragraphs 1 and 6 of Schedule 13 to the Enterprise and Regulatory Reform Act 2013.

(e) Section 63(1) was amended by paragraphs 1 and 44 of Schedule 5 to, and paragraphs 1 and 7 of Schedule 13 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2004/1261.

(f) Section 65G(1) was inserted by S.I. 2004/1261 and amended by paragraphs 1 and 9 of Schedule 13 to, and paragraphs 1 and 49 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

(g) Section 65H(1) was inserted by S.I. 2004/1261 and amended by paragraphs 1 and 10 of Schedule 13 to, and paragraphs 1 and 50 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

**11.** A notice given under section 65E(2)(a) or 65F(2)(b) of the 1998 Act ceases to have effect on exit day.

**12.** Despite their repeal by these Regulations, sections 65B(c) and 65K(d) of the 1998 Act (use of statements in prosecution) continue to have effect on and after exit day in relation to statements made before exit day.

## PART 5

### Redress schemes further to European Commission decisions

**13.—(1)** This paragraph applies where before exit day the European Commission has made a decision that the prohibition in Article 101(1) or Article 102 has been infringed.

(2) In relation to schemes offering compensation in consequence of the decision, and applications for the approval of such schemes, on and after exit day, in connection with the decision, the enactments mentioned in paragraph 7(3) to (8) have effect as described there.

## PART 6

### Court and tribunal proceedings relating to competition

#### Claims before a court or tribunal relating to pre-exit day EU competition infringements

**14.—(1)** In this paragraph, “EU competition infringement” means an infringement or alleged infringement of—

- (a) the prohibition in Article 101(1) of the Treaty on the Functioning of European Union,
- (b) the prohibition in Article 102 of that Treaty,
- (c) the prohibition in Article 53 of the European Economic Area Agreement, or
- (d) the prohibition in Article 54 of that Agreement.

(2) Where an EU competition infringement occurs before exit day, on and after exit day a person may—

- (a) continue any claim (or defence to a claim) in relation to that infringement in proceedings before a court or tribunal in the United Kingdom, and
- (b) make any claim (or defence to a claim) in relation to that infringement in proceedings before a court or tribunal in the United Kingdom which the person could have made before exit day.

(3) The reference in sub-paragraph (2)(b) to a claim which a person could have made before exit day includes a claim which the person could have made if any loss or damage to which the claim relates had arisen before exit day (whether or not it did so).

(4) Where a person has acquired the right to make a claim from another person (whether by operation of law or otherwise), the reference in sub-paragraph (2)(b) to a claim which a person could have made before exit day includes a claim which that other person could have made before exit day.

**15.** In relation to claims (and defences to claims) described in paragraph 14(2) the enactments mentioned in paragraph 7(3) to (8) have effect as described there.

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(a) Section 65E(2) was inserted by S.I. 2004/1261.  
(b) Section 65F(2) was inserted by S.I. 2004/1261.  
(c) Section 65B was inserted by S.I. 2004/1261.  
(d) Section 65K was inserted by S.I. 2004/1261.

16. Where, before exit day, a reference has been made in proceedings by the Competition Appeal Tribunal to the European Court under rule 109 of the Competition Appeal Tribunal Rules 2015 and no preliminary ruling has been made, any stay (or in Scotland, sist) under rule 109(3) is to continue on and after exit day unless or until the Tribunal otherwise directs.

### **Claims before a court or tribunal relating to pre-exit day domestic competition infringements**

17.—(1) In this paragraph “domestic competition infringement” means an infringement or alleged infringement of the Chapter I prohibition or the Chapter II prohibition (in each case as defined in section 59 of the 1998 Act).

(2) On and after exit day, in relation to proceedings before a court or tribunal relating to a claim in respect of loss or damage arising from a domestic competition infringement that occurred before exit day, for the purposes of paragraphs 29, 30, 33 and 34 of Schedule 8A to the 1998 Act, paragraph 3 of that Schedule (definition of “competition authority”, “investigation materials” etc.) has effect without the modifications made by regulation 30(3) of these Regulations.

## **PART 7**

### **Enterprise Act 2002**

#### **Interpretation**

18.—(1) In this Part of this Schedule—

“the 2003 Order” means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(a);

“EC Merger Regulation” means Council Regulation (EC) 139/2004(b) on the control of concentrations between undertakings as it has effect in EU law immediately before exit day;

“enterprise” has the meaning given by section 129 of the 2002 Act;

“European relevant merger situation” has the meaning given by section 68(2) of the 2002 Act.

(2) For the purposes of this Part of this Schedule the EU merger decision has been taken in relation to a concentration if—

(a) the European Commission has made a decision in relation to the concentration under Article 6(1)(b) or 8(1), (2) or (3) of the EC Merger Regulation; or

(b) the concentration is deemed to have been declared compatible with the internal market under Article 10(6) of that Regulation.

#### **Cases decided under the EC Merger Regulation before exit day**

19.—(1) This paragraph applies in a case in which immediately before exit day—

(a) a concentration has been examined by the European Commission under the EC Merger Regulation; and

(b) the EU merger decision has been taken in relation to the concentration.

(2) On or after exit day, in relation to the concentration concerned—

(a) a reference may not be made under section 22 or 33 of the 2002 Act;

(b) an intervention notice may not be given under section 42 of that Act, and

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(a) S.I. 2003/1592; relevant amending instruments are SI 2003/3180 and S.I. 2014/891.

(b) O.J. L 24, 29.1.2004, p. 1.



- (c) a reference may not be made under section 45 of that Act<sup>(a)</sup>.
- (3) Sub-paragraph (2)(b) and (c) have effect subject to paragraph 25 of this Schedule.
- (4) If, on or after exit day, the EU merger decision in relation to the concentration concerned is annulled in full or in part by the European Court following an appeal—
  - (a) sub-paragraph (2) ceases to have effect in relation to that concentration; and
  - (b) despite their repeal by these Regulations, subsections (3) to (5) of section 122 of the 2002 Act continue to have effect in relation to that concentration but with the modification set out in sub-paragraph (5).
- (5) Section 122(4) has effect in relation to the concentration concerned as if the reference to “the EC Merger Regulation or anything done under or in accordance with them” were a reference to—
  - (a) Council Regulation (EC) 139/2004 on the control of concentrations between undertakings as it has effect in EU law before exit day or anything done under or in accordance with that instrument before exit day; and
  - (b) sub-paragraph (2) of this paragraph.

**Article 22 cases referred to but not decided by the European Commission before exit day**

- 20.**—(1) This paragraph applies in a case in which immediately before exit day the CMA—
- (a) has given a notice under section 25(6) of the 2002 Act to persons carrying on enterprises which have or may have ceased to be distinct extending the four month period mentioned in section 24(1)(a) or (2)(b) of that Act<sup>(b)</sup> following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation, but
  - (b) has not given a notice under section 25(8) of that Act ending that extension.
- (2) Subsections (6) to (8) of section 25 of the 2002 Act continue to have effect in relation to the extension under section 25(6) of that Act, despite their repeal by regulation 35(a).
- (3) Section 25(10) of that Act continues to have effect in relation to that extension without the modification made by regulation 35(b).
- (4) If, immediately before exit day, the European Commission has not completed its consideration of the request of the United Kingdom, section 25(8) of that Act, as it continues to have effect by virtue of this paragraph, has effect as if for “of the completion by the European Commission of its consideration of” there were substituted “that the EC Merger Regulation has ceased to apply to”.

- 21.**—(1) This paragraph applies in a case in which immediately before exit day—
- (a) the CMA has given a notice under section 25(6) of the 2002 Act to persons carrying on enterprises which have or may have ceased to be distinct extending the four month period mentioned in section 24(1)(a) or (2)(b) of that Act following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation,
  - (b) the CMA has also given a notice under section 25(8) of that Act ending the extension, and
  - (c) the European Commission is examining the concentration in accordance with the request but the EU merger decision has not been taken in relation to the concentration.
- (2) The four month period mentioned in section 24(1)(a) or (2)(b) of the 2002 Act is extended for the period beginning with the receipt of the notice under section 25(8) of that Act and ending with the receipt of a notice under sub-paragraph (3).
- (3) The CMA must by notice inform the persons carrying on the enterprises concerned that the EC Merger Regulation has ceased to apply to the concentration.

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(a) Section 45 was amended by paragraphs 59 and 85 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant.

(b) Section 24 was amended by paragraphs 59 and 69 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(4) Where the four month period mentioned in section 24(1)(a) or (2)(b) of the 2002 Act is extended by virtue of this paragraph in relation to a particular case—

- (a) the reference in section 25(9) of the 2002 Act to the four month period mentioned in section 24(1)(a) or (2)(b) of that Act being extended or further extended by virtue of section 25 has effect as if it included a reference to it being further extended by virtue of this paragraph; and
- (b) section 25(10)(b) of the 2002 Act has effect as if it referred to the further extension or at least one previous extension of the four month period mentioned in section 24(1)(a) or (2)(b) being made under one or more of section 25(2) and (4) of that Act and this paragraph.

**22.**—(1) This paragraph applies in a case in which immediately before exit day the CMA—

- (a) has given a notice under section 34ZB(5) of the 2002 Act, extending the initial period mentioned in section 34ZA(1) of that Act, following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation, but
- (b) has not given notice as mentioned in section 34ZB(8)(b) of that Act ending that extension.

(2) Subsections (5) and (8) of section 34ZB of the 2002 Act continue to have effect in relation to the extension under section 34ZB(5) of that Act, despite their repeal by regulation 39.

(3) Section 34ZC(1), (3) and (4) of that Act continues to have effect in relation to that extension without the modifications made by regulation 40.

(4) If, immediately before exit day, the European Commission has not completed its consideration of the request of the United Kingdom, section 34ZB(8)(b) of that Act, as it continues to have effect by virtue of this paragraph, has effect as if for “of the completion by the European Commission of its consideration of” there were substituted “that the EC Merger Regulation has ceased to apply to”.

**23.**—(1) This paragraph applies in a case in which immediately before exit day—

- (a) the CMA has given a notice under section 34ZB(5) of the 2002 Act, extending the initial period mentioned in section 34ZA(1) of that Act, following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation,
- (b) the CMA has also given notice as mentioned in section 34ZB(8)(b) of that Act ending the extension, and
- (c) the European Commission is examining the concentration in accordance with the request, but the EU merger decision has not been taken in relation to the concentration.

(2) The initial period mentioned in section 34ZA(1) of the 2002 Act is extended for the period beginning with the receipt of the notice mentioned in section 34ZB(8)(b) of that Act and ending with the receipt of a notice under sub-paragraph (3).

(3) The CMA must by notice inform the persons carrying on the enterprises concerned that the EC Merger Regulation has ceased to apply to the concentration.

(4) Where the initial period mentioned in section 34ZA(1) of the 2002 Act is extended by virtue of this paragraph in relation to a particular case—

- (a) the reference in section 34ZC(3) to a period being extended or further extended under 34ZB(1) or (4) has effect as if it included a reference to it being further extended under this paragraph; and
- (b) section 34ZC(4)(b) has effect as if it referred to the further extension or at least one previous extension of the period mentioned in section 34ZA(1) being made under one or more of section 34ZB(1) of the 2002 Act and this paragraph.

### **Cases referred by the European Commission to the CMA before exit day**

**24.**—(1) This paragraph applies in a case in which immediately before exit day—

- (a) the European Commission has by a decision referred the whole or part of a case to the CMA under Article 4(4) or 9 of the EC Merger Regulation, or is deemed to have taken such a decision; and
- (b) the preliminary assessment period in relation to the case has not ended.

(2) In relation to the case—

- (a) sections 34A, 46A, 46B and 122(3) to (5) of the 2002 Act continue to have effect despite their repeal by Part 3 of these Regulations, and
- (b) sections 34ZA, 73A, 107 and 110B continue to have effect without the modifications made by regulations 38, 48, 50 and 51.

(3) References to the EC Merger Regulation in any provision which continues to have effect by virtue of sub-paragraph (2) have the meaning given by paragraph 18.

(4) In sub-paragraph (1), “the preliminary assessment period” has the meaning given by—

- (a) section 46A(4) of the 2002 Act, in any case where an intervention notice (as defined in section 42(2) of the 2002 Act) is in force; and
- (b) section 34A(4) of that Act, in any other case.

### **Intervention to protect legitimate interests: no European intervention notice before exit day**

**25.**—(1) This paragraph applies in a case in which immediately before exit day—

- (a) a concentration has been examined by the European Commission under the EC Merger Regulation and the EU merger decision has been taken in relation to the concentration;
- (b) the conditions specified in section 67(1) of the 2002 Act are met in relation to the concentration concerned; and
- (c) the Secretary of State has not made a decision to give an intervention notice under subsection (2) of that section.

(2) The old legitimate interests law continues to have effect on and after exit day in relation to the concentration concerned except that the conditions in section 67(1) are treated as being met on and after exit day.

(3) In this paragraph “the old legitimate interests law” means—

- (a) sections 67 and 68 of the 2002 Act;
- (b) the Enterprise Act 2002 (Anticipated Mergers) Order 2003(a) without the modification made by paragraph 6(2) of Schedule 2 to these Regulations; and
- (c) the 2003 Order.

### **Intervention to protect legitimate interests: European intervention notice before exit day**

**26.**—(1) This paragraph applies in a case in which immediately before exit day—

- (a) the Secretary of State has given a notice to the CMA under section 67(2) of the 2002 Act in relation to a European relevant merger situation; and
- (b) the matter to which the notice relates has been finally determined in accordance with article 3 of the 2003 Order.

(2) The old legitimate interests law continues to have effect on and after exit day in relation to undertakings accepted, and orders made, by the Secretary of State before exit day under Schedule 2 to the 2003 Order in connection with the matter.

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(a) S.I. 2003/1595, to which there is an amendment not relevant to these Regulations.

(3) In this paragraph, “the old legitimate interests law” has the same meaning as in paragraph 25.

**27.—**(1) This paragraph applies in a case in which immediately before exit day—

- (a) the Secretary of State has given a notice to the CMA under section 67(2) of the 2002 Act in relation to a European relevant merger situation;
- (b) the matter to which the notice relates has not been finally determined in accordance with article 3 of the 2003 Order; and
- (c) the EU merger decision has been taken in relation to the concentration concerned.

(2) The old legitimate interests law continues to have effect on and after exit day in connection with the matter to which the notice relates.

(3) In this paragraph, “the old legitimate interests law” has the same meaning as in paragraph 25.

**28.—**(1) This paragraph applies in a case in which immediately before exit day—

- (a) the Secretary of State has given a notice to the CMA under section 67(2) of the 2002 Act in relation to a European relevant merger situation;
- (b) the matter to which the notice relates has not been finally determined in accordance with article 3 of the 2003 Order; and
- (c) the EU merger decision has not been taken in relation to the concentration concerned.

(2) On and after exit day—

- (a) the notice under section 67(2) of the 2002 Act has effect as if it were a notice under section 42(2) of that Act, and
- (b) Part 3 of the 2002 Act has effect in relation to the case subject to paragraphs 29 to 33.

(3) In sub-paragraph (2), the reference to Part 3 of the 2002 Act—

- (a) includes provision made under that Part; and
- (b) is a reference to that Part and provision made under it as modified by these Regulations.

**29.—**(1) This paragraph applies in a case falling within paragraph 28(1) in which before exit day the Secretary of State—

- (a) has received a report of the CMA under article 4 of the 2003 Order in relation to the case; and
- (b) has not decided whether to make a reference in relation to the case under article 5(2) of the 2003 Order.

(2) The report under article 4 of the 2003 Order is to be treated on and after exit day as if it were a report under section 44(2) of the 2002 Act(a).

(3) Section 44(2) of the 2002 Act has effect as if it required the CMA to give the Secretary of State that report and an additional report which includes the decisions mentioned in section 44(4) of that Act and, where relevant, the descriptions of undertakings mentioned in section 44(5) of that Act.

(4) In a case where the CMA is required by virtue of sub-paragraph (3) to make an additional report under section 44 of the 2002 Act—

- (a) section 43 of the 2002 Act(b) has effect as if the reference in subsection (4)(a) of that section to the time within which the CMA is to report to the Secretary of State under section 44 of the 2002 Act were a reference to the time within which the additional report is to be made;

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(a) Section 44 was amended by was amended by paragraphs 59 and 84 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant.

(b) Section 43 was amended by paragraph 8 of Schedule 16 to the Communications Act 2003 and paragraphs 59 and 83 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (b) section 45 of the 2002 Act has effect as if the reference in subsection (1) of that section to a report of the CMA under section 44 of the 2002 Act were a reference to both the report of the CMA under article 4 of the 2003 Order in relation to the case and the additional report by the CMA;
- (c) section 46 of the 2002 Act has effect as if the reference in subsection (2) of that section to decisions included in the CMA's report by virtue of subsection (4) of section 44 of the 2002 Act and any descriptions of undertakings as mentioned in subsection (5) of that section were a reference to the decisions and descriptions of undertakings included in the additional report by virtue of sub-paragraph (3) of this paragraph; and
- (d) section 107(9)(a) of the 2002 Act(a) has effect as if the reference to the report of the CMA under section 44 of the 2002 Act were a reference to both the report of the CMA under article 4 of the 2003 Order in relation to the case and the additional report by the CMA.

**30.** In a case falling within paragraph 28(1), a report given by OFCOM to the Secretary of State before exit day under article 4A of the 2003 Order is to be treated on and after exit day as if it were a report under section 44A(2) of the 2002 Act(b).

**31.** In a case falling within paragraph 28(1), on and after exit day—

- (a) undertakings accepted before exit day under paragraph 3 of Schedule 2 to the 2003 Order are to be treated as if they had been accepted under paragraph 3 of Schedule 7 to the 2002 Act(c); and
- (b) orders made before exit day under paragraphs 2, 5 or 6 of Schedule 2 to the 2003 Order are to be treated as if made under paragraphs 2, 5 or 6 respectively of Schedule 7 to the 2002 Act.

**32.—(1)** This paragraph applies in a case falling within paragraph 28(1) in which immediately before exit day—

- (a) the Secretary of State has made a reference under article 5(2) or (3) of the 2003 Order in relation to the case; and
- (b) the CMA has not given the Secretary of State a report under article 8 of the 2003 Order in relation to the case.

(2) On and after exit day—

- (a) the reference, if made under article 5(2) of the 2003 Order, is to be treated as if it had been made under section 45(2) of the 2002 Act;
- (b) the reference, if made under article 5(3) of the 2003 Order, is to be treated as if it had been made under section 45(4) of the 2002 Act; and
- (c) for the purposes of section 56(3) of the 2002 Act(d), the CMA is to be treated as having made a report under section 44 of the 2002 Act containing a decision that it is or may be the case that there is an anti-competitive outcome in relation to the relevant merger situation concerned.

(3) For the purposes of section 34C of the 2002 Act, the group constituted in consequence of the reference under article 5(2) or (3) of the 2003 Order in relation to the case is to be treated on and after exit day as if it were constituted in consequence of a reference under section 45(2) or (4) of the 2002 Act (as appropriate).

**33.—(1)** This paragraph applies in a case falling within paragraph 28(1) in which before exit day—

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(a) Section 107(9) was amended by paragraphs 18 of Schedule 16 to the Communications Act 2003.  
 (b) Section 44A was inserted by section 377 of the Communications Act 2003.  
 (c) Schedule 7 was amended by paragraphs 59 and 160 of Schedule 5, and paragraphs 1 and 4 of Schedule 7, to the Enterprise and Regulatory Reform Act 2013; there is another amendment to Schedule 7 but it is not relevant.  
 (d) Section 56 was amended by paragraphs 59 and 98 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (a) the CMA has given a report to the Secretary of State under article 8 of the 2003 Order in relation to the case; and
- (b) the Secretary of State has not made a decision in relation to the case under article 12(2) of the 2003 Order.

(2) The reference under article 5(2) or (3) of the 2003 Order is to be treated on and after exit day as if it were a reference under section 45(2) or (4) of the 2002 Act (as appropriate).

(3) The CMA must prepare a revised report in relation to the case and give it to the Secretary of State within the period of 12 weeks beginning with exit day.

(4) On and after exit day—

- (a) if it has not already been published before exit day, the Secretary of State is not required to publish the report under article 8 of the 2003 Order; and
- (b) Part 3 of the 2002 Act has effect as if the references to a report under section 50 of that Act were references to the revised report required under sub-paragraph (3) of this paragraph but this is subject to sub-paragraph (5).

(5) Where the CMA is required to prepare a revised report under sub-paragraph (3)—

- (a) section 43 of the 2002 Act has effect as if the reference in subsection (4)(e) of that section to the time within which the CMA is to prepare a report under section 50 and give it to the Secretary of State were a reference to the time within which the revised report is to be prepared and given to the Secretary of State under sub-paragraph (3) of this paragraph;
- (b) section 50 of the 2002 Act has effect as if subsection (1) were omitted;
- (c) section 51 of the 2002 Act has effect as if subsection (1) were omitted; and
- (d) section 52 has effect as if subsections (8) to (13) were omitted.

(6) For the purposes of section 34C of the 2002 Act<sup>(a)</sup>, the group constituted in consequence of the reference under article 5(2) or (3) of the 2003 Order in relation to the case is to be treated on and after exit day as if it were constituted in consequence of a reference under section 45(2) or (4) of the 2002 Act (as appropriate).

### **General savings**

**34.**—(1) On and after exit day, despite their repeal by these Regulations, subsections (3) to (5) of section 122 of the 2002 Act continue to have effect in relation to any case where enterprises ceased to be distinct before exit day, other than in a case falling within paragraph 19(1) in relation to which sub-paragraph (2) of that paragraph has effect.

(2) In its continued application by virtue of sub-paragraph (1), section 122(4) has effect as if the reference in that subsection to the “EC Merger Regulation or anything done under or in accordance with them” were a reference to Council Regulation (EC) 139/2004 on the control of concentrations between undertakings as it has effect in EU law before exit day or anything done under or in accordance with that instrument before exit day.

**35.** The repeal of section 209 of the 2002 Act does not affect the validity of any provision made under that section before exit day.

## **PART 8**

### **Company Directors Disqualification Legislation**

**36.**—(1) This paragraph applies where an undertaking engages in conduct which infringes Article 101 or 102 of the Treaty of the Functioning of the European Union before exit day.

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(a) Section 34C was inserted by paragraphs 59 and 74 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(2) On and after exit day—

- (a) section 9A of the Company Directors Disqualification Act 1986 has effect without the modifications made by paragraph 1(1) to (3) of Schedule 1 to these Regulations; and
- (b) Article 13A of the Company Directors Disqualification (Northern Ireland) Order 2002 has effect without the modifications made by paragraph 10(1) to (3) of Schedule 1 to these Regulations.

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (d) and (g) of the European Union (Withdrawal) Act 2018 (c. 16)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of competition law and, in particular, amend legislation relating to (a) infringements of, and exemptions from, competition law and claims for damages or loss arising out of infringements and (b) mergers. Part 2 amends the Competition Act 1998 (c. 41), Part 3 amends the Enterprise Act 2002 (c. 40), Part 4 amends other primary legislation, Part 5 amends subordinate legislation, Part 6 amends and revokes retained EU law and Part 7 makes transitional and saving provision.

An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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