
STATUTORY INSTRUMENTS

2020 No. 1343

The Competition (Amendment etc.) (EU Exit) Regulations 2020

PART 3

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

7. Part 3 of the 2019 Regulations is amended as follows.

8. After regulation 48 insert—

“**48A.** After section 95 insert—

“Transferred EU merger commitments

95A Transferred EU merger commitments

(1) The CMA must—

- (a) monitor compliance with transferred EU merger commitments; and
- (b) take such action (if any) under subsection (3) or section 95B as it considers appropriate.

(2) Any person to whom transferred EU merger commitments relate has a duty to comply with those commitments.

(3) Compliance with transferred EU merger commitments is enforceable by civil proceedings brought by the CMA for an injunction or for interdict or for any other appropriate relief or remedy.

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

(5) The CMA must ensure that the provisions of transferred EU merger commitments are entered and kept up to date in the register referred to in section 91(1).

(6) In this Part “transferred EU merger commitments” means EU merger commitments—

- (a) which are the subject of an Article 95(2) transfer decision (and, where those commitments are modified by, or as contemplated by, that decision or by a later Article 95(2) transfer decision, means those commitments as so modified); and
- (b) which have not been waived or substituted by the European Commission.

(7) In this section—

“Article 95(2) transfer decision” means an instrument issued by the European Commission in accordance with Article 95(2) of the EU withdrawal agreement transferring responsibility for the monitoring and enforcement of EU merger commitments to the CMA;

“EU merger commitments” means commitments attached to a decision adopted by the European Commission under Article 6(1)(b) and (2) or 8(2) of Council Regulation (EC) No 139/2004⁽²⁾ of 20 January 2004 on the control of concentrations between undertakings.

(8) So far as the context permits or requires, transferred EU merger commitments are to be treated for the purposes of this Part as if—

- (a) any reference to the area of the European Union or of the European Economic Area included the United Kingdom;
- (b) any reference to the internal market included the United Kingdom;
- (c) any reference to a member State included the United Kingdom;
- (d) any reference to a party to the EEA agreement included the United Kingdom.

(9) Subsection (8) is subject to any different provision made by the Article 95(2) transfer decision in question.

95B Power of directions in connection with transferred EU merger commitments

(1) The CMA may give directions falling within subsection (2) to—

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

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

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, transferred EU merger commitments; or
- (b) to do, or refrain from doing, anything so specified or described which the person is required by transferred EU merger commitments to do or refrain from doing.

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

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

- (a) a person bound by the transferred EU merger commitments concerned;
- (b) a United Kingdom national;
- (c) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
- (d) a person carrying on business in the United Kingdom.

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

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

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

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

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

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

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

9. After regulation 50 insert—

“**50A.** After section 109(3) insert—

“109A Transferred EU merger commitments: witnesses, documents etc

Any power exercisable by the CMA under section 109 for “permitted purposes” (as mentioned in subsection (A1) of that section) is also exercisable by the CMA under that section for the purposes of assisting the CMA in carrying out any of its functions under or by virtue of section 95A(1) or 95B.”.

50B. In section 110A(4), after subsection (8) insert—

“(9) Where the section 109 power is exercised for the purposes of assisting the CMA in carrying out any of its functions under or by virtue of section 95A(1) or 95B (see section 109A), the relevant day is the day when the transferred EU merger commitments concerned are waived or substituted by the European Commission.”.”.

10. After regulation 51 insert—

“**51A.**—(1) Section 120(5) is amended as follows.

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

(3) After subsection (1) insert—

“(1A) The decisions are—

- (a) a decision of the CMA, OFCOM or the Secretary of State under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation;
- (b) a decision of the CMA under this Part in connection with transferred EU merger commitments.”.

(4) In subsection (2)(b), after “a reference or possible reference” insert “or transferred EU merger commitments”.”.

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

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

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

“(d) after the entry for “The supply of services (and a market for services etc)” insert—

“Transferred EU merger commitments Section 95A(6)”
