

SCHEDULES

SCHEDULE 8

PRIVATE ACTIONS IN COMPETITION LAW

PART 2

ENTERPRISE ACT 2002

- 18 The Enterprise Act 2002 is amended in accordance with this Part.
- 19 (1) Section 14 (constitution of Tribunal for particular proceedings and its decisions) is amended as follows.
- (2) In subsection (1), after “before it” insert “, including proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act.”.
- (3) After subsection (1) insert—
- “**(1A)** But in the case of proceedings relating to a claim under section 47A of the 1998 Act which is subject to the fast-track procedure (as described in Tribunal rules), the Tribunal may consist of a chairman only.”
- 20 In section 15 (Tribunal rules), in subsection (1), at the end insert “, including proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act.”
- 21 In section 16 (transfers of certain proceedings to and from Tribunal), in subsection (5), for “High Court or the Court of Session or” substitute “court of all or any part of”.
- 22 Schedule 4 (Tribunal: procedure) is amended in accordance with the following paragraphs of this Part.
- 23 In paragraph 1 (decisions of the Tribunal), for sub-paragraph (1)(a) substitute—
- “**(a)** state the reasons for the decision;
- “**(aa)** state whether the decision was unanimous or taken by a majority or, where proceedings are heard by a chairman only, state that fact;”.
- 24 After paragraph 1 insert—

“Enforcement of injunctions in England and Wales and Northern Ireland

- 1A (1) Where a person (“A”) fails to comply with an injunction granted by the Tribunal in proceedings under section 47A or 47B of the 1998 Act, the Tribunal may certify the matter to the High Court.
- (2) The High Court may enquire into the matter.
- (3) If, after hearing any witnesses who may be produced against or on behalf of A, and any statement made by or on behalf of A, the High Court is

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satisfied that A would have been in contempt of court if the injunction had been granted by the High Court, the High Court may deal with A as if A were in contempt.”

- 25 In each of paragraphs 4(c) and 5(1)(c)—
- (a) for “47B(6)” substitute “47C(3) or (4)”; and
 - (b) for “specified body concerned” substitute “representative in the proceedings under section 47B of that Act”.
- 26 In paragraph 6—
- (a) for sub-paragraph (a) substitute—
 - “(a) awards damages to a person in respect of a claim made or continued on behalf of that person (but is not the subject of an order under section 47C(3) or (4) of that Act); or”;
 - (b) in sub-paragraph (b)—
 - (i) for “an individual” substitute “a person”,
 - (ii) for “his behalf” substitute “behalf of that person”; and
 - (c) in the full-out words at the end, for “individual” substitute “person”.
- 27 In paragraph 7—
- (a) for “specified body” substitute “representative”; and
 - (b) for “individual” substitute “person”.
- 28 In paragraph 9—
- (a) the existing provision is numbered as sub-paragraph (1), and
 - (b) after that provision insert—
 - “(2) In this Schedule, where a paragraph is capable of applying to proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act, any reference in that paragraph to “proceedings” includes a reference to those proceedings.”
- 29 In paragraph 11(2), for paragraph (a) substitute—
- “(a) make further provision as to procedural aspects of the operation of the limitation or prescriptive periods in relation to claims which may be made in proceedings under section 47A of the 1998 Act, as set out in section 47E(3) to (6) of that Act;”.
- 30 For paragraph 13 substitute—
- “13 (1) Tribunal rules may provide for the Tribunal—
- (a) to reject a claim made under section 47A of the 1998 Act or a section 47B claim if it considers that there are no reasonable grounds for making it;
 - (b) to reject a section 47B claim if—
 - (i) the Tribunal declines to make a collective proceedings order in respect of the proceedings under section 47B of the 1998 Act,
 - (ii) the Tribunal makes a collective proceedings order in respect of the proceedings, but the order does not provide that the claim in question is eligible for inclusion in the proceedings,

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- (iii) the Tribunal revokes the collective proceedings order in respect of the proceedings, or
 - (iv) the Tribunal varies the collective proceedings order in such a way that the claim in question is no longer included in the proceedings;
- (c) to reject a section 47B claim if the claim had been previously made in proceedings under section 47A of the 1998 Act by a person who has not consented to its being continued in proceedings under section 47B of that Act.

(2) In this paragraph, “a section 47B claim” means a claim made in proceedings under section 47B of the 1998 Act at the commencement of those proceedings.”

31 After paragraph 15 insert—

“Fast-track procedure

- 15A (1) Tribunal rules may make provision in relation to a fast-track procedure for claims made in proceedings under section 47A of the 1998 Act, including describing the factors relevant to determining whether a claim is suitable to be dealt with according to that procedure.
- (2) Tribunal rules may make different provision for claims in proceedings under section 47A of the 1998 Act which are and which are not subject to the fast-track procedure.
- (3) Tribunal rules may, in particular, provide for the Tribunal to—
- (a) grant an interim injunction on a claim in proceedings under section 47A of the 1998 Act which is subject to the fast-track procedure to a person who has not given an undertaking as to damages, or
 - (b) impose a cap on the amount that a person may be required to pay under an undertaking as to damages given on the granting of such an interim injunction.
- (4) In sub-paragraph (3) “an undertaking as to damages” means an undertaking to pay damages which a person sustains as a result of the interim injunction and which the Tribunal considers the person to whom the injunction is granted should pay.

Collective proceedings

- 15B (1) Tribunal rules may make provision in relation to collective proceedings under section 47B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—
- (a) the procedure governing an application for a collective proceedings order;
 - (b) the factors which the Tribunal must take into account in deciding whether a claim is suitable to be brought in collective proceedings (but rules need not make provision in connection

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- with the determination as to whether claims raise the same, similar or related issues of fact or law);
- (c) the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a representative in collective proceedings;
- (d) the procedure by which the Tribunal is to reach a decision as to whether to make a collective proceedings order;
- (e) the procedure by which a person may opt in or opt out of collective proceedings;
- (f) the factors which the Tribunal must take into account in deciding whether to vary or revoke a collective proceedings order;
- (g) the assessment of damages in collective proceedings;
- (h) the payment of damages in collective proceedings, including the procedure for publicising an award of damages;
- (i) the effect of judgments and orders in collective proceedings.

Collective settlements

- 15C (1) Tribunal rules may make provision in relation to collective settlements under sections 49A and 49B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—
- (a) the procedure governing an application for approval of a proposed collective settlement;
 - (b) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to make a collective settlement order (but rules need not make provision in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
 - (c) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a settlement representative in relation to a collective settlement;
 - (d) where section 49B applies, the procedure by which the Tribunal is to reach a decision as to whether to make a collective settlement order;
 - (e) the factors which the Tribunal must take into account in deciding whether to approve a proposed collective settlement;
 - (f) the procedure by which the Tribunal is to reach a decision as to whether to approve a collective settlement;
 - (g) the procedure by which a person may opt in or opt out of a collective settlement;
 - (h) the payment of compensation under a collective settlement, including the procedure for publicising a compensation award.”

32 In paragraph 17 (conduct of the hearing)—

- (a) after sub-paragraph (1)(h) insert—
 - “(ha) allowing the Tribunal to order payments in respect of the representation of a party to proceedings under section 47A

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or 47B of the 1998 Act, where the representation by a legal representative was provided free of charge;”;

- (b) in sub-paragraph (2)—
 - (i) for “an individual” substitute “a person”; and
 - (ii) for “that individual” substitute “that person”;
- (c) after sub-paragraph (2) insert—

“(2A) Rules under sub-paragraph (1)(h) may provide for costs or expenses to be awarded to or against a person on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act in respect of an application in the proceedings made by that person (where that application is not made by the representative in the proceedings on that person’s behalf).”; and

- (d) in sub-paragraph (3), for “an individual” substitute “a person”.

33 After paragraph 20 insert—

“Stay or sist of proceedings

- 20A (1) In relation to proceedings in England and Wales or Northern Ireland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the stay of the proceedings, including as to—
- (a) the circumstances in which a stay may be ordered or removed at the request of a party to the proceedings,
 - (b) the circumstances in which the proceedings may be stayed at the instance of the Tribunal, and
 - (c) the procedure to be followed.
- (2) In relation to proceedings in Scotland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the sist of the proceedings, including as to—
- (a) the circumstances in which a sist may be granted or recalled at the request of a party to the proceedings,
 - (b) the circumstances in which the proceedings may be sisted at the instance of the Tribunal, and
 - (c) the procedure to be followed.
- (3) Rules under sub-paragraph (1) or (2) may in particular make provision in relation to the stay or sist of proceedings under section 47A or 47B which relate to a claim in respect of an infringement decision (as defined in section 47A(6)) which has not become final (see section 58A of the 1998 Act).”

34 After paragraph 21 insert—

“Injunctions

- 21A Tribunal rules may make provision in relation to the grant of injunctions (including interim injunctions) in proceedings under section 47A or 47B of the 1998 Act.”

35 In paragraph 23(3), for “an individual” substitute “a person”.

36 In paragraph 25, after “transfer of” insert “all or any part of”.