

STATUTORY INSTRUMENTS

2019 No. 93

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

PART 2

Amendment of the Competition Act 1998

2. The Competition Act 1998 ^{M1} is amended as follows.

Commencement Information

11 Reg. 2 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M1 [1998 c. 41.](#)

3.—(1) Section 10 ^{M2} 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.”.

Commencement Information

- I2** Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)
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Marginal Citations

- M2** 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.

4. After section 10 insert—

“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.”.

Commencement Information

- I3** Reg. 4 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

5. Omit section 11 ^{M3}.

Commencement Information

- I4** Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M3** Section 11 was amended by [S.I. 2012/1809](#).

- 6.**—(1) Section 25 ^{M4} 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)”.

Commencement Information

- I5** Reg. 6 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M4** 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](#).

- 7.** In section 25A(1)(b) ^{M5}, for “subsections (2) to (7)” substitute “subsections (2), (4) and (6)”.

Commencement Information

I6 Reg. 7 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M5 Section 25A was inserted by section 42(1) and (2) of the Enterprise and Regulatory Reform Act 2013.

[^{F17A}. In section 30A(1), for “sections 26 and 27 to 28A” substitute “sections 26, 27 to 28A and 40ZD”.]

Textual Amendments

F1 Reg. 7A inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), [regs. 1\(1\), 3](#)

Commencement Information

I7 Reg. 7A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

8. In section 31(2) ^{M6}—
- at the end of paragraph (a), insert “ or ”;
 - omit paragraphs (c) and (d).

Commencement Information

I8 Reg. 8 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M6 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](#).

9. In section 32(1) ^{M7}, omit “or that it infringes the prohibition in Article 101(1)”.

Commencement Information

I9 Reg. 9 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M7 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](#).

10. In section 33(1) ^{M8}, omit “or that it infringes the prohibition in Article 102”.

Commencement Information

I10 Reg. 10 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M8 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](#).

11. In section 35 ^{M9}—

- (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) ”;
- (d) omit subsection (9).

Commencement Information

I11 Reg. 11 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M9 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](#).

12. In section 36 ^{M10}—

- (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”.

Commencement Information

I12 Reg. 12 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M10 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](#).

13. In section 38 ^{M11}—

- (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).

Commencement Information

I13 Reg. 13 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see [reg. 1\(1\)](#)

Marginal Citations

M11 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.

[^{F2}**13A.** After section 40, insert—

“Transferred EU anti-trust commitments and transferred EU anti-trust directions

Interpretation

(1) In this section and in sections 40ZB and 40ZD “transferred EU anti-trust commitments” means EU anti-trust commitments—

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

(2) In this section—

“Article 95(2) commitments 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 anti-trust commitments to the CMA;

“EU anti-trust commitments” means commitments contained, pursuant to Article 9(1) of Regulation 1/2003, in a decision adopted by the European Commission under that Regulation.

(3) In this section and in sections 40ZC and 40ZD a “transferred EU anti-trust direction” means an EU anti-trust direction—

- (a) which is the subject of an Article 95(2) direction transfer decision (and, where that direction is modified by, or as contemplated by, that decision, or by a later Article 95(2) direction transfer decision, means that direction as so modified), and
- (b) which has not been wholly revoked by the European Commission.

(4) In this section—

“Article 95(2) direction 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 an EU anti-trust direction to the CMA;

“EU anti-trust direction” means a direction given pursuant to Article 7(1) of Regulation 1/2003 in a decision adopted by the European Commission under that Regulation;

“Regulation 1/2003” means Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

(5) So far as the context permits or requires, transferred EU anti-trust commitments and transferred EU anti-trust directions are to be treated for the purposes of this section and sections 40ZB to 40ZD 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.

(6) Subsection (5) is subject to any different provision made by the Article 95(2) commitments transfer decision or Article 95(2) direction transfer decision in question.

Transferred EU anti-trust commitments

(1) The CMA has the function of monitoring compliance with transferred EU anti-trust commitments.

(2) If a person who is bound by transferred EU anti-trust commitments fails, without reasonable excuse, to adhere to those commitments, the CMA may apply to the court for an order—

- (a) requiring the defaulter to make good the default within a time specified in the order; or
- (b) if any of the transferred EU anti-trust commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.

(3) An order of the court under subsection (2) may provide for all of the costs of, or incidental to, the application for the order to be borne by—

- (a) the person in default; or
- (b) any officer of an undertaking who is responsible for the default.

(4) In the application of subsection (3) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

(5) In this section, “transferred EU anti-trust commitments” has the meaning given by section 40ZA(1).

Transferred EU anti-trust directions

(1) The CMA has the function of monitoring compliance with transferred EU anti-trust directions.

(2) If a person fails, without reasonable excuse, to comply with a transferred EU anti-trust direction, the CMA may apply to the court for an order—

- (a) requiring the defaulter to make good the default within a time specified in the order; or

- (b) if the transferred EU anti-trust direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (3) An order of the court under subsection (2) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
 - (a) the person in default; or
 - (b) any officer of an undertaking who is responsible for the default.
- (4) In the application of subsection (3) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.
- (5) In this section, “transferred EU anti-trust direction” has the meaning given by section 40ZA(3).

Information relating to transferred EU anti-trust commitments and transferred EU anti-trust directions

- (1) The CMA may require any person to produce to the CMA a specified document, or to provide the CMA with specified information, for the purposes of assisting the CMA—
 - (a) to monitor compliance with transferred EU anti-trust commitments, or
 - (b) to decide whether to make an application under section 40ZB(2) in respect of those transferred EU anti-trust commitments.
- (2) The CMA may require any person to produce to the CMA a specified document, or to provide the CMA with specified information, for the purposes of assisting the CMA—
 - (a) to monitor compliance with a transferred EU anti-trust direction, or
 - (b) to decide whether to make an application under section 40ZC(2) in respect of a transferred EU anti-trust direction.
- (3) The powers conferred by subsections (1) and (2) are to be exercised by a notice in writing which indicates the subject matter and purpose of the demand (including identifying the transferred EU anti-trust commitments or transferred EU anti-trust direction in question).
- (4) The CMA may also specify in the notice—
 - (a) the time and place at which any document is to be produced or any information is to be provided;
 - (b) the manner and form in which it is to be produced or provided.
- (5) The power under this section to require a person to produce a document includes power—
 - (a) if the document is produced—
 - (i) to take copies of it or extracts from it;
 - (ii) to require that person, or any person who is a present or past officer of, or is or was at any time employed by, that person, to provide an explanation of the document;
 - (b) if the document is not produced, to require that person to state, to the best of their knowledge and belief, where it is.
- (6) In this section—

“specified” means—

 - (a) specified, or described, in the notice under subsection (3), or

- (b) falling within a category which is specified, or described, in that notice;
“transferred EU anti-trust commitments” has the meaning given by section 40ZA(1);
“transferred EU anti-trust direction” has the meaning given by section 40ZA(3).”.

Textual Amendments

- F2** Regs. 13A, 13B inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), 4

Commencement Information

- I14** Reg. 13A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

13B. In section 40A(1), for “28 or 28A” substitute “28, 28A or 40ZD”.]

Textual Amendments

- F2** Regs. 13A, 13B inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), 4

Commencement Information

- I15** Reg. 13B in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

14. In section 46(3) ^{M12}—

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

Commencement Information

- I16** Reg. 14 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M12** 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](#).

15. In section 47(1)(a) ^{M13}, for “paragraphs (a) to (f)” substitute “ paragraph (a), (c) or (e) ”.

Commencement Information

- I17** Reg. 15 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M13 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.

16.—(1) Section 47A ^{M14} 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.”.

Commencement Information

I18 Reg. 16 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M14 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 \(c.15\)](#).

17. In section 49C(11) ^{M15}, 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.”.

Commencement Information

I19 Reg. 17 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M15 Section 49C was inserted by paragraphs 1 and 12 of Schedule 8 to the Consumer Rights Act 2015.

18. In section 52, omit subsection (1A) ^{M16}.

Commencement Information

I20 Reg. 18 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M16 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) ^{M17} 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”.

Commencement Information

I21 Reg. 19 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M17 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](#).

- 20.** In section 58A ^{M18}, omit subsection (4).

Commencement Information

I22 Reg. 20 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M18 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](#).

- 21.**—(1) Section 59(1) ^{M19} 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);”.

Commencement Information

I23 Reg. 21 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M19 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.

22. Omit section 60 ^{M20}).

Commencement Information

I24 Reg. 22 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

M20 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](#).

23. After section 60 insert—

“60A Certain principles etc to be considered or applied from [^{F3}IP completion 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.

(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 [F³IP completion day], and any relevant decision made by that Court before [F³IP completion day], so far as applicable immediately before [F³IP completion 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 [F³IP completion 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 [F³IP completion 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 [F³IP completion 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 [F³IP completion day];
- (f) the particular circumstances under consideration.

(8) In subsection (2)(b), the reference to principles laid down before [F³IP completion day] is a reference to such principles as they have effect in EU law immediately before [F³IP completion day], disregarding the effect of principles laid down, and decisions made, by the European Court on or after [F³IP completion 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.”.

Textual Amendments

- F3** Words in reg. 23 substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), 5

Commencement Information

- I25** Reg. 23 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

24. Omit Parts 2 and 2A ^{M21}.

Commencement Information

- I26** Reg. 24 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M21** 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) ^{M22}, omit “, 65 or 65L to 65N”.

Commencement Information

- I27** Reg. 25 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M22** Section 72(1) was amended by [S.I. 2004/1261](#).

26.—(1) Section 73 ^{M23} 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”.

Commencement Information

I28 Reg. 26 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(1)**

Marginal Citations

M23 Section 73 was amended by **S.I. 2004/1261**.

27. Omit section 75A ^{M24}.

Commencement Information

I29 Reg. 27 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(1)**

Marginal Citations

M24 Section 75A was inserted by **S.I. 2004/1261**; there are amendments to section 75A, but none is relevant to these Regulations.

28. In Schedule 1, omit Part 2 ^{M25}.

Commencement Information

I30 Reg. 28 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(1)**

Marginal Citations

M25 There is an amendment to Part 2 but it is not relevant to these Regulations.

29.—(1) Schedule 3 is amended as follows.

(2) Omit paragraph 3 ^{M26} (and the italic heading before it).

[^{F4}(3) In paragraph 5(3)—

(a) for paragraph (b) substitute—

“(b) imposed by or under the EU withdrawal agreement or the EEA EFTA separation agreement and having legal effect in the United Kingdom without further enactment (and in this paragraph, “EEA EFTA separation agreement” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020 (see section 39(1) of that Act)).”;

(b) omit paragraph (c).]

Textual Amendments

F4 Reg. 29(3) substituted (31.12.2020 immediately before IP completion day) by **The Competition (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1343)**, **regs. 1(1), 6**

Commencement Information

I31 Reg. 29 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(1)**

Marginal Citations

M26 Paragraph 3 was amended by **S.I. 2007/126** and **S.I. 2017/701**.

- 30.**—(1) Schedule 8A ^{M27} 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—

 - (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).

Commencement Information

I32 Reg. 30 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(1)**

Marginal Citations

M27 Schedule 8A was inserted by **S.I. 2017/385**.

31.—(1) Schedule 9 is amended as follows.

(2) In paragraph 5(1)(d) ^{M28}—

- (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) ^{M29}—

- (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 ^{M30}, 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.

Commencement Information

I33 Reg. 31 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(1)**

Marginal Citations

M28 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**.

M29 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**.

M30 Paragraph 8 was substituted by **S.I. 2004/1261**.

Changes to legislation:

There are currently no known outstanding effects for the The Competition (Amendment etc.) (EU Exit) Regulations 2019, PART 2.