

## STATUTORY INSTRUMENTS

# 2019 No. 93

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

### PART 3

#### Amendment of the Enterprise Act 2002

32. The Enterprise Act 2002 <sup>M1</sup> is amended as follows.

#### Commencement Information

**I1** Reg. 32 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** [2002 c. 40.](#)

33. In section 16(6) <sup>M2</sup>, 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.”.

#### Commencement Information

**I2** Reg. 33 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

**M2** The definition of “infringement issue” in section 16(6) was amended by [S.I. 2012/1809](#).

34.—(1) Section 22 <sup>M3</sup> 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).

#### Commencement Information

**I3** Reg. 34 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 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.

**35.** In section 25 <sup>M4</sup>—

- (a) omit subsections (6), (7) and (8);
- (b) in subsection (10)(b), for “subsections (2), (4) and (6)” substitute “ subsections (2) and (4) ”.

### Commencement Information

**I4** Reg. 35 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 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.

**36.—**(1) Section 33 <sup>M5</sup> 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).

### Commencement Information

**I5** Reg. 36 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 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.

**37.** In section 34(1)(b), for “, 59(2) or 67(2)” substitute “ or 59(2) ”.

### Commencement Information

**I6** Reg. 37 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

38. In section 34ZA <sup>M6</sup>, omit subsection (5).

**Commencement Information**

**I7** Reg. 38 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** Sections 34ZA to 34ZC were inserted by paragraphs 1 and 4 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

39. In section 34ZB, omit subsections (5) and (8).

**Commencement Information**

**I8** Reg. 39 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

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) ”.

**Commencement Information**

**I9** Reg. 40 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

41. Omit section 34A <sup>M7</sup> (and the italic heading before it).

**Commencement Information**

**I10** Reg. 41 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 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](#).

42.—(1) Section 42 <sup>M8</sup> 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)” ”.

#### Commencement Information

- I11** Reg. 42 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 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](#).

- 43.** In section 46 <sup>M9</sup>—
- (a) in subsection (1), omit paragraphs (b) and (c);
  - (b) omit subsection (1A).

#### Commencement Information

- I12** Reg. 43 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 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](#).

- 44.** Omit sections 46A <sup>M10</sup> and 46B (and the italic heading before section 46A).

#### Commencement Information

- I13** Reg. 44 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** 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](#).

- 45.** In section 58 <sup>M11</sup>—

- (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.

**Commencement Information**

**I14** Reg. 45 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 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.

- 46.** In section 59(6)(c)<sup>M12</sup>, omit “, (6) and (8)”.

**Commencement Information**

**I15** Reg. 46 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 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.

- 47.** Omit sections 67<sup>M13</sup> and 68<sup>M14</sup> (and the italic heading before section 67).

**Commencement Information**

**I16** Reg. 47 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 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](#).

**M14** 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](#).

- 48.** In section 73A(1)<sup>M15</sup>, omit paragraph (b) and the “or” before it.

**Commencement Information**

**I17** Reg. 48 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 73A was inserted by paragraphs 1 and 7 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

[<sup>F1</sup>**48A.** After section 95 insert—

#### *“Transferred EU merger commitments*

#### **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.
- (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 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.

#### **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.
- (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.”.]

#### **Textual Amendments**

- F1** Reg. 48A 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), **8**

#### Commencement Information

**I18** Reg. 48A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

**49.** In section 99(5)—

- (a) at the end of paragraph (b), insert “ or ”;
- (b) omit paragraph (d) <sup>M16</sup> and the “or” before it.

#### Commencement Information

**I19** Reg. 49 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** 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](#).

**50.** In section 107(1) <sup>M17</sup>, omit paragraphs (ae), (af), (ag) and (ah).

#### Commencement Information

**I20** Reg. 50 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** 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.

[<sup>F2</sup>**50A.** After section 109 insert—

**“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.”.

#### Textual Amendments

**F2** Regs. 50A, 50B inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), [regs. 1\(1\), 9](#)

#### Commencement Information

**I21** Reg. 50A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)



**50B.** In section 110A, 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.”.]

#### Textual Amendments

**F2** Regs. 50A, 50B 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), **9**

#### Commencement Information

**I22** Reg. 50B in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

**51.**—(1) Section 110B <sup>M18</sup> 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).

#### Commencement Information

**I23** Reg. 51 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 110B was inserted by section 29(11) of the Enterprise and Regulatory Reform Act 2013.

[<sup>F3</sup>**51A.**—(1) Section 120 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”.]

#### Textual Amendments

**F3** Reg. 51A 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), **10**

#### Commencement Information

**I24** Reg. 51A 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)**

**52.** Omit section 122 <sup>M19</sup>.

#### Commencement Information

**I25** Reg. 52 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 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.

**53.—(1)** Section 124 <sup>M20</sup> 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,”.

#### Commencement Information

**I26** Reg. 53 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 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.

**54.** In section 129(1) <sup>M21</sup>—

- (a) omit the definition of “EU law”;
- (b) omit the definition of “the EC Merger Regulation”.

#### Commencement Information

**I27** Reg. 54 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** 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<sup>M22</sup>, 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) ”.
- [<sup>F4</sup>(d) after the entry for “The supply of services (and a market for services etc)” insert—

“Transferred EU merger commitments	Section 95A(6)”]
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#### Textual Amendments

- F4** Reg. 55(d) 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), **11**

#### Commencement Information

- I28** Reg. 55 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** 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.

56. In section 153(2)<sup>M23</sup>, omit the words from “; and in this subsection” to the end.

#### Commencement Information

- I29** Reg. 56 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 153(2) was amended by [S.I. 2004/1079](#).

57. In section 171<sup>M24</sup>, omit subsections (6) and (11).

#### Commencement Information

- I30** Reg. 57 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 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](#).

58. Omit section 209 <sup>M25</sup>.

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**Commencement Information**

**I31** Reg. 58 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**

**M25** Section 209 was amended by [S.I. 2011/1043](#) and [S.I. 2012/1809](#).

59. Omit section 240 <sup>M26</sup>.

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**Commencement Information**

**I32** Reg. 59 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**

**M26** Section 240 was amended by [S.I. 2011/1043](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Competition (Amendment etc.) (EU Exit) Regulations 2019, PART 3.