EXPLANATORY MEMORANDUM TO

THE COMPETITION ACT 1998 (TECHNOLOGY TRANSFER AGREEMENTS BLOCK EXEMPTION) ORDER 2026

2026 No. 369

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Kate Dearden, Parliamentary Under-Secretary of State at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Alex Willliams, SCS1 for Competition Policy, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tasmia Qureshi and Audrey Augusto at the Department for Business and Trade can be contacted by email at the following address with any queries regarding the instrument: CompetitionPolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order, the Competition Act 1998 (Technology Transfer Agreements Block Exemption) Order 2026 (TTBEO), automatically exempts certain types of technology transfer agreements from the prohibition of anticompetitive agreements contained in Chapter I Part I of the Competition Act 1998 (the "Act"), insofar as they meet the conditions set out in the TTBEO. The purpose of the TTBEO is to provide legal certainty for businesses and to facilitate the licensing of technology rights, in recognition that such agreements can often be pro-competitive and can significantly benefit innovation, investment and growth.

4.2 The TTBEO replaces a similar block exemption, the Technology Transfer Block Exemption Regulation[1] (TTBER), which was made under EU law and assimilated into UK law following the UK's withdrawal from the EU. The assimilated TTBER expires on 30 April 2026.

[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 (EUR 2014/316, as amended by S.I. 2019/93 (https://www.legislation.gov.uk/uksi/2019/93/contents), 2022/1271 and 2022/1272) see https://www.legislation.gov.uk/eur/2014/316/contents.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the entirety of the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the entirety of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Competition law and its enforcement contribute to ensuring that market failures are prevented or remedied by prohibiting agreements between businesses that prevent, restrict or distort competition (the "Chapter I prohibition"). This can include, for example, price-fixing, dividing up or sharing markets, or sharing commercially sensitive information. In so doing, competition law protects businesses and consumers based in the UK from illegal, anticompetitive behaviours across the economy.

5.2 An agreement can be exempt from the Chapter I prohibition on the basis that it produces benefits which outweigh its impact on competition. Ordinarily, businesses must make their own assessment of whether an agreement, which restricts competition, can be justified based on its benefits. In certain cases, it may be clear that all agreements in a particular category are likely to be exempt agreements. In these circumstances, a block exemption order may be made to automatically exempt agreements in that category if they satisfy the conditions set out in the block exemption order. In this way, a block exemption order provides legal certainty for businesses.

5.3 The assimilated TTBER created a block exemption for technology transfer agreements, which correspond to agreements where one party (the licensor) licenses or makes certain assignments of intellectual property rights (such as patents, design rights, software copyrights and know-how) to another party (licensee) for the production of goods or services.

5.4 In 2024, the Competition and Markets Authority (CMA) carried out a review of the assimilated TTBER in order to make a recommendation to the Secretary of State for Business and Trade on whether the assimilated TTBER should be replaced with a UK block exemption order when it expires or be allowed to lapse without replacement and, if it was to be replaced, whether to vary it in any way.

5.5 On 14 March 2025, the CMA published a draft recommendation and consulted on it publicly until 11 April 2025. The CMA also took into consideration the evidence from the European Commission's own evaluation of the TTBER as it applies under EU law[2] (EU TTBER). The CMA considered the views presented, resulting in the CMA's final recommendation to the Secretary of State on 30 September 2025.[3]

5.6 The CMA found that a block exemption for technology transfer agreements remains a relevant and useful tool for businesses operating in the UK. The CMA recommended that the Secretary of State replace the assimilated TTBER with a domestic block exemption order, the TTBEO.

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[2] Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (OJ No. L 93, 28.03.2014, p.17-23).

[3] CMA's Recommendation to the Secretary of State: https://assets.publishing.service.gov.uk/media/68dbaf5edadf7616351e4c1b/final-recommendation.pdf.

5.7 A technology transfer block exemption has benefits for businesses. Firstly, it provides legal certainty by assuring businesses that their agreements comply with competition law. Secondly, it avoids placing on businesses the burden of carrying out a detailed scrutiny of agreements that are likely to be exempt. Thirdly, it ensures consistency of approach by providing a common framework for businesses to assess their agreements against.

5.8 The continuation of the block exemption also ensures that the CMA does not need to scrutinise essentially benign or beneficial agreements and allows the CMA to effectively use its resources to enforce competition law across the UK by targeting more detrimental forms of anticompetitive agreements and practices.

5.9 The TTBEO essentially maintains the existing exemption regime but makes some limited changes to improve the current rules, make some necessary clarifications regarding certain provisions and tailor the block exemption to the UK market, while ensuring consistency with the EU's approach where appropriate.

What was the previous policy, how is this different?

5.10 The assimilated TTBER exempted from the Chapter I prohibition certain agreements involving the transfer of technology rights (such as patents and know-how), insofar as the conditions set out in the assimilated TTBER where met.

5.11 In particular, the block exemption applied to agreements where the parties' market share was below certain thresholds (20% for agreements between competitors and 30% for agreements between non-competitors). In addition, an agreement would not qualify for the block exemption if it contained "hardcore restrictions", which are provisions that are in general considered to be serious restrictions of competition, such as a restriction of a party's ability to determine its prices when selling products to third parties. Further provisions ("excluded restrictions") would also not benefit from the block exemption, if included in the agreement. Excluded restrictions (e.g. certain restrictions preventing a party from challenging IP validity) are provisions for which it cannot be assumed with sufficient certainty that they fulfil the conditions for individual exemption. Unlike hardcore restrictions, if excluded restrictions could be severed from the rest of the agreement, the remaining provisions might still have benefitted from the block exemption under the assimilated TTBER.

5.12 The TTBEO gives effect, with some minor modifications, to the CMA's recommendation that the assimilated TTBER should be replaced with a UK block exemption order, when it expires on 30 April 2026. The TTBEO largely preserves the exemption regime under the assimilated TTBER and includes the same definitions, conditions and obligations (adapted as necessary for UK purposes or to make certain necessary clarifications). The TTBEO does, however, introduce the following changes.

Definitions (articles 2 and 7)

5.13 The TTBEO amends the definition of "technology rights":

- it removes "utility models", as UK law does not provide protection for utility models and as such, there are unlikely in practice to be utility model licences in the UK; and
- it adds "copyright in a database" and "database right" to reflect the increased significance of data in the modern economy. As a result, agreements for the licensing of such rights will now come within the scope of the exemption.

5.14 In addition, the TTBEO introduces definitions of "active sales" and "passive sales", which are relevant for the purposes of the hardcore restrictions. These definitions are consistent with the definition of those terms in other block exemption orders, such as the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022.

Application of the market share thresholds (articles 6 and 9)

5.15 For an agreement to qualify for the block exemption, the market shares of the parties to the agreement must not exceed certain thresholds (see article 5). The TTBEO makes some amendments in relation to the application of these thresholds.

5.16 First, the TTBEO clarifies the reference year for calculating the parties' market shares. In principle, market shares are calculated based on data relating to the preceding calendar year. However, if that year is not representative, the parties will now be required to use an average of their market shares from the three preceding calendar years.

5.17 Second, the TTBEO makes an amendment in relation to the "footprint approach", set out in article 6(1)(d). This is a method used to calculate market shares for technology rights, and which requires using product market sales (instead of royalties) as a proxy for determining the market position of the licensed technology. The footprint approach now applies equivalently to both parties to the agreement (the licensor, as previously, and now the licensee too), to avoid any confusion or uncertainty as to how the market share of the licensee is to be calculated.

5.18 Third, the grace period, set out in article 9(2), has been increased to three years. As a result, if the parties initially meet the exemption thresholds but subsequently breach them, they will continue to benefit from the block exemption for the following three years. This change will help provide greater certainty and ensure consistency with the EU TTBER.

Alternative test for technology markets (article 5)

5.19 Under the assimilated TTBER, the market share thresholds applied both to the relevant markets for the contract products (*i.e.* the products produced using the technology rights licensed under the agreement) and to the relevant markets for the licensed technology rights.

5.20 To address practical challenges in calculating market shares for the licensed technology rights, the TTBEO introduces an alternative test for technology markets. Under this test, an agreement will qualify for the exemption if the parties can show that there are three or more technologies that compete with the technology covered by their agreement.

5.21 The market share threshold for the licensed technology rights and the "three or more competing technologies" test are alternative tests, which means that an agreement satisfying either of the two tests will benefit from the exemption (subject to the parties being within the market share thresholds on the relevant markets for the contract products and to all other relevant conditions being met).

Additional clarificatory modifications (articles 2, 5 and 7)

5.22 The TTBEO introduces the following clarificatory modifications:

- It replaces references to "competing technologies" in the assimilated TTBER with references to "competing technology rights" and adds definitions of "competing technology rights" and "competing products" to provide greater clarity for businesses.

- It amends the core definition of "know-how" so that it includes know-how useful for the sale (and not just the production) of the contract products. This ensures that such know-how is included in the provision extending the block exemption (article 3(3)) so that it also applies to the ancillary licensing of other intellectual property and know-how which is directly related to the production or sale of the contract products.
- It amends the definition of "potential competitor", in particular to clarify and expand on the meaning of "a short period of time" in the existing definition. These clarifications are consistent with the draft revised EU TTBER.

Correction to the Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022 (article 14)

5.23 The TTBEO amends the definition of "passive sales" in article 10 of the Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022 (S.I. 2022/1271), to include a reference to Scottish procurement legislation, as the current definition refers only to public procurement exercises undertaken in accordance with the Procurement Act 2023, which does not apply to procurement by devolved Scottish authorities. This will align the definition with that in other block exemption orders such as the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022 (S.I. 2022/516) and the TTBEO.

6. Legislative and Legal Context

How has the law changed?

6.1 The Act prohibits agreements between undertakings that prevent, restrict or distort competition (known as the "Chapter I prohibition"). Section 9 of the Act sets out the conditions under which such an agreement is exempt from the Chapter I prohibition.

6.2 Section 6 of the Act provides that the Secretary of State, on advice of the CMA, may make a block exemption order covering agreements which fall under a particular category of agreements that are likely to be exempt under section 9 of the Act. Such an order may impose conditions or obligations subject to which the block exemption is to have effect. An agreement which falls into a category specified in a block exemption order (and that does not breach any of the conditions specified in the order) is exempt from the Chapter I prohibition, providing greater certainty for a business.

6.3 A similar approach exists under EU law. The European Commission can make block exemption regulations, exempting certain categories of agreement from the Article 101(1) Treaty on the Functioning of the European Union (TFEU) prohibition (which is equivalent to the Chapter I prohibition in UK law). Before the UK's withdrawal from the EU, these block exemption regulations, including the EU TTBER, also applied in respect of the Chapter I prohibition as "parallel exemptions" under section 10 of the Act. Following the UK's withdrawal from the EU, the TTBER was assimilated into UK law.

6.4 Giving effect to the CMA's recommendation, subject to some minor clarificatory modifications, the TTBEO replaces the assimilated TTBER, preserving in large part the existing exemption regime while introducing the amendments set out in paragraphs 5.13 – 5.22 above. In accordance with section 8(2) of the Act, the Secretary of State has informed the CMA of the modifications, and the CMA has agreed that they should be made.

6.5 As noted in paragraph 5.23 above, the TTBEO also makes a correction to article 10 of the Competition Act 1998 (Research and Development Agreements Block

Exemption) Order 2022. The Secretary of State has consulted the CMA in accordance with section 8(5) of the Act, and the CMA has agreed that the correction should be made.

Why was this approach taken to change the law?

6.6 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The CMA consulted on its proposed recommendation to the Secretary of State regarding the assimilated TTBER in 2025. It received 12 responses from academics, law firms, businesses and business associations. Respondents agreed that the CMA should recommend to the Secretary of State that he should replace the assimilated TTBER with a UK block exemption order.

7.2 The CMA subsequently published the outcome of the consultation and its final recommendation to the Secretary of State.[4]

7.3 The Department for Business and Trade conducted a technical consultation on the legal drafting of the Order, which ran from 5 January 2026 to 9 February 2026 and received 4 responses.[5] Respondents welcomed the introduction of the TTBEO and supported the retention of a block exemption for technology transfer agreements. Some respondents made comments on matters of policy, particularly regarding the scope of the block exemption and the application of the exemption thresholds, and emphasised the importance of the CMA's guidance in ensuring legal certainty for technology licensing. The Government's response will be published on 26 March 2026 on Gov.UK.

8. Applicable Guidance

8.1 The CMA will publish detailed guidance on the application of the TTBEO. The CMA expects to consult on draft guidance in April. The guidance will be available at http://www.gov.uk/cma or by writing to the CMA at The Cabot, 25 Cabot Square, London E14 4QZ, United Kingdom.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this regulation because the Equivalent Annual Net Direct Cost to Business (EANDCB) is below the threshold for a full impact assessment and there is a relatively small number of businesses affected, meaning that there is a low level of impact per business. Instead, a proportionate De Minimis Assessment has been produced in line with the Better Regulation Framework guidance. The EANDCB estimated over a ten-year appraisal period is £0.49m, estimated using an absolute upper bound of 9200 affected businesses. In practice, some businesses will avoid any new costs. The direct costs associated with the changes introduced by the TTBEO include administrative expenses and compliance

[4] CMA's Recommendation to the Secretary of State: https://assets.publishing.service.gov.uk/media/68dbaf5edadf7616351e4c1b/final-recommendation.pdf.
[5] Consultation on the Draft Technology Transfer Agreements Block Exemption Order: https://www.gov.uk/government/consultations/draft-technology-transfer-agreements-block-exemption-order.

costs for adapting to the new regulations. However, the indirect benefits, such as increasing the regulations legal clarity and increasing the options available for assessing eligibility, are likely to outweigh these costs by enabling more technology transfer agreements in the UK.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies of the TTBEO is limited relative to the baseline option of renewing the block exemption unchanged and preserving the status quo. Most of the changes introduced by the TTBEO outlined above would create limited costs and benefits. The main benefit is to expand the scope of the block exemption and encourage its use in a wider set of markets by making it easier to apply in practice, which could have wider growth benefits.

9.3 The legislation impacts small or micro businesses (SMEs). No specific action is proposed to minimise regulatory burdens on SMEs as the impact will be positive. The wider scope of the block exemption will mean that more SMEs will be able to benefit from technology licensing and see a reduction in R&D costs through access to existing innovations, accelerated time to market by avoiding the need to develop technology in-house, and access to external expertise that may not be available within their own teams.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is for the CMA to oversee its implementation. It will keep under review its application and effectiveness in achieving its policy and operational objectives.

10.2 A statutory review clause is included in the instrument. This will ensure a post implementation review of the TTBEO is carried out within 5 years of the date this Order comes into force and then at intervals not exceeding 5 years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The TTBEO corrects an error in The Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022 (S.I. 2022/1271). The Department for Business and Trade has consulted with the SI Registrar as to whether the free of charge issue procedure is appropriate to remedy this error and the SI Registrar has agreed that it is appropriate.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because this instrument replaces a piece of assimilated EU law that expires on 30 April 2026.