Draft Regulations laid before Parliament under paragraph 8D(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION

COMPETITION

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

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) and 8B of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**) and section 41(1) of the European Union (Withdrawal Agreement) Act 2020(**b**).

In accordance with paragraph 8D(1) of Schedule 7 to the European Union (Withdrawal) Act 2018(**c**), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Competition (Amendment etc.) (EU Exit) Regulations 2020 and come into force immediately before IP completion day(**d**).

(2) An amendment, repeal or revocation made by these Regulations has the same extent as the provision to which it relates.

(3) In these Regulations, "the 2019 Regulations" means the Competition (Amendment etc.) (EU Exit) Regulations 2019(**e**).

(**a**) 2018 c. 16; section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1), section 8B was inserted by section 18 of that Act and paragraph 21 of Schedule 7 was amended by paragraphs 38 and 53 of Schedule 5 to that Act.

(**b**) 2020 c. 1.

(**c**) Paragraph 8D was inserted by paragraphs 38 and 51 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020.

(**d**) IP completion day is defined in section 39 of the European Union Withdrawal Agreement Act 2020.

(**e**) S.I. 2019/93, as amended by S.I. 2019/685. Relevant amendments are noted where reference is made to the specific provisions which have been amended.

PART 2

Amendment of Part 2 of the 2019 Regulations: amendment of the Competition Act 1998

2. Part 2 of the 2019 Regulations is amended as follows.

3. After regulation 7, insert—

"**7A.** In section 30A(1)(**a**), for "sections 26 and 27 to 28A" substitute "sections 26, 27 to 28A and 40ZD".".

4. After regulation 13, insert—

"**13A.** After section 40, insert—

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

40ZA 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;

(**a**) Section 30A was inserted by section 198 Enterprise Act 2002 (c. 40) and subsequently amended by section 39 of the Enterprise and Regulatory Reform Act 2012 (c. 24).

"Regulation 1/2003" means Council Regulation (EC) No 1/2003(**a**) 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.

40ZB 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).

40ZC 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.

(**a**) O.J. L 1, 4.1.2003, p. 1.

(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).

40ZD 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). " .

13B. In section 40A(1)(**a**), for "28 or 28A" substitute "28, 28A or 40ZD".".

5. In regulation 23, in inserted section 60A of the Competition Act 1998, for "exit day", in each place it occurs (including the heading), substitute "IP completion day".

6. In regulation 29, for paragraph (3), substitute—

"(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).".

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(**b**).

(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.

(**a**) Section 40A was inserted by section 40(2) of the Enterprise and Regulatory Reform Act 2013 (c. 24).
(**b**) Section 91 was amended by paragraphs 59 and 126 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(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(**a**) 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.

(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

(**a**) O.J. L 24, 29.1.2004, p. 1.

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(**a**) 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(**b**), 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(**c**) 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".".

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)"".

(**a**) 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.

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

(**c**) 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.

PART 4

Amendment of Part 4 of the 2019 Regulations: amendment of other primary legislation

12. Schedule 1 to the 2019 Regulations is amended as follows.

Company Directors Disqualification Act 1986

13. In paragraph 1(4), in the text inserted into section 9A(11) of the Company Directors Disqualification Act 1986(**a**) for "exit day" substitute "IP completion day".

Gas Act 1986

14. In paragraph 2, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of paragraph (b), insert "or".

(3) For paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Electricity Act 1989

15. In paragraph 3, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of paragraph (b), insert "or".

(3) For paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Water Industry Act 1991

16. In paragraph 4, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of paragraph (b), insert "or".

(3) For paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Electricity (Northern Ireland) Order 1992

17. In paragraph 5, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of sub-paragraph (b), insert "or".

(3) For sub-paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Railways Act 1993

18. In paragraph 6, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of paragraph (b), insert "or".

(**a**) 1986 (c. 46). Section 9A was inserted by section 204(1) and (2) of the Enterprise Act 2002 (c. 40). Subsection (11) was subsequently amended by S.I. 2011/1043.

(3) For paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Gas (Northern Ireland) Order 1996

19. In paragraph 7, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of sub-paragraph (b), insert "or".

(3) For sub-paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Financial Services and Markets Act 2000

20. In paragraph 8, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of paragraph (b), insert "and".

(3) For paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act).".".

Transport Act 2000

21. In paragraph 9, for sub-paragraph (2) substitute—

"(2) In section 86(3)(**a**)—

(a) at the end of paragraph (b), insert "or";

(b) for paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions, ".".

Company Directors Disqualification (Northern Ireland) Order 2002

22. In paragraph 10(4), in the text inserted into Article 13A(11) of the Company Directors Disqualification (Northern Ireland) Order 2002(**b**) for "exit day" substitute "IP completion day".

Communications Act 2003

23.—(1) Paragraph 11 is amended as follows.

(2) For sub-paragraph (2), substitute—

"(2) In section 371(2)(**c**)—

(a) at the end of paragraph (b), insert "or";

(b) for paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

(3) In sub-paragraph (5), for "exit day" in both places, substitute "IP completion day".

(**a**) Section 86(3) was substituted by S.I. 2004/1261 and subsequently amended by paragraph 14 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2012/1809 and S.I. 2014/892.

(**b**) S.I. 2002/3150 (N.I. 4); article 13A was inserted by S.I. 2005/1454 (N.I. 9) and subsequently amended by S.I. 2014/892.

(**c**) Section 371(2) was substituted by S.I. 2004/1261, and subsequently amended by paragraphs 42 and 46 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809 and S.I. 2014/892.

(4) In sub-paragraph (6), in the text inserted as paragraph 6(7A) of Schedule 11 to the Communications Act 2003(**a**), for "exit day", in each place it occurs, substitute "IP completion day".

(5) In sub-paragraph (7), in the text inserted as paragraph 6A of Schedule 11 to the Communications Act 2003, for "exit day", in each place it occurs, substitute "IP completion day".

Water and Sewerage Services (Northern Ireland) Order 2006

24. In paragraph 12, for sub-paragraphs (2) and (3) substitute—

"(2) At the end of sub-paragraph (b), insert "or".

(3) For sub-paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),".".

Health and Social Care Act 2012

25. For paragraph 13 substitute—

"**13.** In section 72(2) of the Health and Social Care Act 2012(**b**), for paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act).".".

Civil Aviation Act 2012

26. In paragraph 14—

(a) after sub-paragraph (2) insert—

"(2A) In section 62(2)(a)(**c**), for "(d)", substitute "(c)".";

(b) for sub-paragraph (3), substitute—

"(3) In section 62(3)—

(a) at the end of paragraph (b), insert "or";

(b) for paragraphs (c) and (d), substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act).".".

Financial Services (Banking Reform) Act 2013

27. In paragraph 15, for sub-paragraphs (2) and (3), substitute—

"(2) At the end of paragraph (b), insert "and".

(3) For paragraphs (c) and (d) substitute—

"(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act).".".

(**a**) 2003 c. 21. Paragraph 6 of Schedule 11 was amended by S.I. 2012/1809 and S.I. 2014/892.

(**b**) 2012 c. 7; section 72(2) was amended by paragraphs 47 and 48 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2014/892.

(**c**) Section 62(2) was amended by S.I. 2014/892 and paragraphs 50 and 51 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

PART 5

Amendment of Part 5 of the 2019 Regulations: amendment of subordinate legislation

28. Schedule 2 to the 2019 Regulations is amended as follows.

The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000

29. In paragraph 1(2)(c), in the definition of "third-country reinsurance undertaking", in paragraph (b), for "exit day" substitute "IP completion day".

The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

30. In paragraph 2(2)(c), in the definition of "third-country reinsurance undertaking", in paragraph (b), for "exit day" substitute "IP completion day".

The Competition Act 1998 (Concurrency) Regulations 2014

31. In paragraph 5, after sub-paragraph (1), insert—

"(1A) In regulation 2, in the definition of "prescribed functions", after sub-paragraph (i) insert—

"(ia) any of the functions of the CMA under section 40ZB, 40ZC or 40ZD of the Act;".".

The Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014

32. In paragraph 7(4), in the definition of "third-country reinsurance undertaking", in paragraph (b), for "exit day" substitute "IP completion day".

The Water Mergers (Modification of Enactments) Regulations 2004

33. In paragraph 12, after sub-paragraph (8) insert—

"(8A) In regulation 32—

(a) omit the "and" at the end of paragraph (a);

(b) after paragraph (a) insert—

"(aa) subsection (1A)(**a**) were omitted; and".".

PART 6

Amendment of Part 6 of the 2019 Regulations: amendment of retained direct EU legislation

Amendment of Schedule 3: amendment of retained direct EU legislation

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

(2) In paragraph 1—

(a) in sub-paragraph (j), for "exit day" substitute "IP completion day";

(b) after sub-paragraph (j) insert—

(**a**) Subsection (1A) is inserted in section 120 of the Enterprise Act 2002 by regulation 10 of these Regulations.

";

(k) Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.".

(3) In paragraph 2, for "exit day" substitute "IP completion day".

PART 7

Amendment of Part 7 of the 2019 Regulations: saving and transitional provision

CHAPTER 1

Competition Act 1998

Amendment of Part 2 of Schedule 4: Exemptions from the Chapter 1 prohibition

35.—(1) Part 2 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraphs 2 and 3, for each reference to "exit day" substitute "IP completion day".

Amendment of Part 3 of Schedule 4: CMA investigations under Part 1 of the 1998 Act

36.—(1) Part 3 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraphs 5 and 6, for each reference to "exit day" substitute "IP completion day".

(3) In paragraph 7—

(a) in sub-paragraphs (1) and (2), for each reference to "exit day" substitute "IP completion day";

(b) in sub-paragraph (3)(b), before "with" insert "except in relation to cases in which the European Commission has continued competence after IP completion day in accordance with Article 92 of the EU withdrawal agreement,";

(c) in sub-paragraph (4)(a), for "exit day" substitute "IP completion day";

(d) in sub-paragraphs (4)(b)(i) to (iv)—

(i) for each reference to "sub-paragraph" substitute "paragraph";

(ii) for "exit day", substitute "IP completion day" in each place it appears;

(e) in sub-paragraph (6), for "paragraphs 2 to 9 and 11 to 15" substitute "paragraphs 2 to 9 and 12 to 15";

(f) after sub-paragraph (6) insert—

"(6A) The Communications Act 2003 applies without the modifications made by paragraph 11 of Schedule 1 to these Regulations, except for the modifications made by sub-paragraphs (3) to (7) of that paragraph.".

(4) After paragraph 7, insert—

"Appropriate level of a penalty

7A.—(1) This paragraph applies where—

(a) before IP completion day, a penalty or a fine has been imposed by the European Commission, or a court or other body in another Member State, in respect of an agreement or conduct; or

(b) on or after IP completion day, a penalty or fine has been imposed by the European Commission in respect of an agreement or conduct in relation to which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) The CMA, the Tribunal or the appropriate court must take that penalty or fine into account when setting the amount of penalty under Part 1 of the 1998 Act in relation to that agreement or conduct.

(3) In sub-paragraph (2), "the appropriate court" means—

(a) in relation to England and Wales, the Court of Appeal;

(b) in relation to Scotland, the Court of Session;

(c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;

(d) the Supreme Court.".

(5) For the heading before paragraph 8, substitute "Cases subject to relevant separation agreement law".

(6) For paragraph 8, substitute—

"**8.**—(1) In this paragraph and paragraphs 8A and 8B—

"Regulation 1/2003" means Council Regulation (EC) No 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty as it has effect from time to time for the purposes of relevant separation agreement law; and

"relevant decision" means—

a decision adopted by the European Commission pursuant to article 7(1) of Regulation 1/2003; or

a decision adopted by the European Commission pursuant to article 9(1) of Regulation 1/2003.

(2) This paragraph applies where before IP completion day—

(a) under article 11(6) of Regulation 1/2003, the CMA was relieved of competence to apply one or both of articles 101 (in relation to an agreement) or 102 (in relation to conduct), by the European Commission initiating proceedings in relation to that agreement or conduct;

(b) the European Commission had made a relevant decision; and

(c) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—

(i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or

(ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.

(3) On and after IP completion day the CMA must not—

(a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;

(b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or

(b) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any remedial directions given or commitments made binding by the relevant decision.

8A.—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation into an agreement, decision, concerted practice or abuse of a dominant position under Regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement.

(2) While the Commission's investigation is ongoing, the CMA must not open or re-open any investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the competition concerns with which the Commission's investigation is concerned.

(3) Nothing in sub-paragraph (2) prevents the CMA from opening an investigation by virtue of section 25(2), (4) or (6) into competition concerns relating to an agreement, decision, concerted practice or abuse of a dominant position insofar as those concerns relate to the effects arising from the agreement, decision, concerted practice or abuse of a dominant position on and after IP completion day.

8B.—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation under regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement and—

(a) the European Commission has made a relevant decision;

(b) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—

(i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or

(ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.

(2) On and after IP completion day the CMA must not—

(a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;

(b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or

(c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any directions given or commitments made binding by the relevant decision.".

Amendment of Part 4 of Schedule 4: Inspections and investigations under Parts 2 and 2A of the 1998 Act

37.—(1) Part 4 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) Before paragraph 9, insert—

"**8C.**—(1) This paragraph applies where, on or after IP completion day, the European Commission has ordered an Article 20 inspection, an Article 21 inspection, or an Article 22(2) inspection (as defined in section 61 of the 1998 Act) in relation to a case in which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) Despite its repeal by these Regulations, Part 2 of the 1998 Act continues to have effect on and after IP completion day.

(3) Part 4 of the 1998 Act has effect—

(a) as if, in subsection 72(1)(**a**), after "sections 42 to 44" there were inserted "or 65";

(b) without the modifications made by regulations 26(3) and (4) of these Regulations;

(c) as if section 73(8)(b)(**b**) read "that may be conferred by a warrant under section 28, 28A, 62, 62A or 63";

(d) without the modification made by regulation 27 of these Regulations.

(**a**) Section 72(1) was amended by S.I. 2004/1261.
(**b**) Section 73(8) was amended by S.I. 2004/1261.

(4) The Schedule to the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014(**a**) has effect—

(a) as if, in rule 2, paragraph (1) read—

"These Regulations apply when the CMA takes investigation or enforcement action under the Act in relation to the Chapter I prohibition or the Chapter II prohibition, or investigation action under Part 2 of the Act in relation to the prohibition in Article 101(1) or Article 102"; and

(b) without the modifications made by paragraph 4(4) of Schedule 2 to these Regulations.".

(3) In paragraph 9—

(a) for "On and after exit day" substitute "On and after IP completion day";

(b) at the start of sub-paragraph (a), insert "except in relation to cases in which the European Commission has continued competence in accordance with Article 92 of the EU withdrawal agreement,".

(4) In paragraph 10, for "exit day" substitute "IP completion day, except where the warrant relates to a case in which the European Commission has continued competence in accordance with article 92 of the EU withdrawal agreement".

(5) In paragraphs 11 and 12, for each reference to "exit day" substitute "IP completion day".

Amendment of Part 5 of Schedule 4: Redress schemes further to European Commission decisions

38.—(1) Part 5 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraph 13—

(a) for sub-paragraph (1), substitute—

"(1) This paragraph applies where—

(a) before IP completion day, the European Commission has made a decision that the prohibition in Article 101(1) or Article 102 has been infringed; or

(b) the European Commission has made a decision that the prohibition in Article 101(1) or Article 102 has been infringed after IP completion day in a case in which it had continued competence in accordance with article 92 of the EU withdrawal agreement.";

(b) in sub-paragraph (2), for "exit day" substitute "IP completion day".

Amendment of Part 6: Court and tribunal proceedings relating to competition

39.—(1) Part 6 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) At the start of Part 6, after the Part heading insert—

"**Interpretation**

13A. In this Part of this Schedule—

"domestic competition infringement" means an infringement or alleged infringement of the Chapter I prohibition or the Chapter II prohibition (in each case as defined in section 59 of the 1998 Act);

"EU competition infringement" means an infringement or alleged infringement of—

(a) the prohibition in Article 101(1) of the Treaty on the Functioning of the European Union,

---

(**a**) S.I. 2014/458.

(b) the prohibition in Article 102 of that Treaty,

(c) the prohibition in Article 53 of the European Economic Area Agreement, or

(d) the prohibition in Article 54 of that Agreement.".

(3) In the heading before paragraph 14, for "pre-exit day" substitute "pre-IP completion day".

(4) In paragraph 14—

(a) omit sub-paragraph (1);

(b) for each reference to "exit day" substitute "IP completion day".

(5) In paragraph 15—

(a) the existing text becomes sub-paragraph (1) of that paragraph;

(b) after sub-paragraph (1) insert—

"(2) Sub-paragraph (1) continues to apply if the claim (or defence to a claim) includes a claim (or defence to a claim) in respect of loss or damage arising from a domestic competition infringement that occurred before IP completion day including if that domestic competition infringement continues on or after IP completion day.".

(6) In paragraph 16, for each reference to "exit day" substitute "IP completion day".

(7) In the heading before paragraph 17, for "pre-exit day" substitute "pre-IP completion day".

(8) In paragraph 17—

(a) omit sub-paragraph (1);

(b) for sub-paragraph (2) substitute—

"(2) This paragraph applies to a claim (or defence to a claim)—

(a) which is in respect of loss or damage arising from a domestic competition infringement that occurred before IP completion day including if that infringement continues on or after IP completion day;

(b) which is not included in a claim (or defence to a claim) described in paragraph 14(2).";

(c) after sub-paragraph (2) insert—

"(3) On and after IP completion day, in relation to proceedings before a court or tribunal relating to a claim (or defence to a claim) to which this paragraph applies, the enactments mentioned in paragraphs 7(3) to (8) have effect as described there." .

Insertion of Part 6A: Concentrations subject to EU controls in accordance with the EU withdrawal agreement

40.—(1) Schedule 4 to the 2019 Regulations is amended as follows.

(2) After paragraph 17, insert—

"PART 6A

Concentrations subject to EU Controls in accordance with the EU withdrawal agreement

17A.—(1) On and after IP completion day, to the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the prohibition in section 2 of the 1998 Act does not apply to the agreement if the European Commission has exclusive jurisdiction in the matter in accordance with Article 92 of the EU withdrawal agreement.

(2) On and after IP completion day, to the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the prohibition in section 18 of the 1998 Act does not apply to the conduct if

the European Commission has exclusive jurisdiction in the matter in accordance with Article 92 of the EU withdrawal agreement.

(3) In this paragraph, "concentration" means a concentration with a Community dimension within the meaning of Articles 1 and 3 of Council Regulation (EC) No 139/2004 of 20th January 2004.".

CHAPTER 2

Enterprise Act 2002 and other merger control legislation

41. Part 7 of Schedule 4 to the 2019 Regulations is amended as follows.

42. In the heading of Part 7, after "2002" insert "and other merger control legislation".

43. In paragraph 18, in the definition of "EC Merger Regulation", for "immediately before exit day" substitute "from time to time".

44. Omit paragraph 19.

45. After paragraph 19 insert—

"**EU merger decisions annulled in full or in part**

19A.—(1) This paragraph applies if, on or after IP completion day, a decision by the European Commission in relation to a continued competence concentration is annulled in full or in part by the European Court and European Commission or the European Court makes a binding decision that the European Commission is not competent—

(a) to re-examine the concentration concerned under Article 10(5) of the EC Merger Regulation; or

(b) to consider as part of such a re-examination any effects of the concentration concerned on competition within a market or markets in the United Kingdom.

(2) Nothing in the EU withdrawal agreement is to be taken as preventing the following in relation to the concentration concerned—

(a) a reference being made under section 22 or 33 of the 2002 Act;

(b) an intervention notice being given under section 42 of the 2002 Act;

(c) a reference being made under section 45 of the 2002 Act.

(3) The European Commission and the European Court are to be treated as having made a binding decision for the purposes of sub-paragraph (1)(a) or (b) when—

(a) the decision or other document containing a decision to that effect or from which a decision to that effect may reasonably be inferred is published; and

(b) the decision becomes final.

(4) A decision of the European Commission becomes final—

(a) when the time for appealing against it in the European Court expires without an appeal having been brought; or

(b) where an appeal has been brought against the decision, when—

(i) the appeal and any further appeal in the European Court in relation to the decision has been decided or has otherwise ended; and

(ii) the time for appealing against the result of the appeal or further appeal in the European Court has expired without another appeal having been brought.

(5) A decision by the European Court becomes final—

(a) when the time for appealing against it expires without an appeal having been brought; or

(b) where an appeal has been brought against the decision, when the appeal in relation to the decision has been decided or has otherwise ended.

(6) On and after IP completion day, despite their repeal by these Regulations, subsections (3) to (5) of section 122 of the 2002 Act continue to have effect in relation to the concentration concerned except that the condition mentioned in section 122(4) is to be treated as being satisfied during the period starting on IP completion day and ending on the day the binding decision referred to in sub-paragraph (1)(a) or (b) is made by the European Commission or the European Court (as the case may be).

(7) In this paragraph, "continued competence concentration" means a concentration—

(a) in relation to which the EU merger decision was taken before IP completion day; or

(b) in relation to which the European Commission has continued competence as regards the United Kingdom on and after IP completion day in accordance with Article 92 of the EU withdrawal agreement.".

Article 22 cases referred to European Commission before IP completion day

46. In paragraph 20(1) and (4) and in the heading before that paragraph, for "exit day" substitute "IP completion day".

47. Omit paragraph 21.

48. In paragraph 22, in sub-paragraphs (1) and (4), for "exit day" substitute "IP completion day".

49. Omit paragraph 23.

Cases referred by the European Commission to the CMA

50.—(1) Paragraph 24 is amended as follows.

(2) In sub-paragraph (1)—

(a) for the words from "in a case" to "exit day" substitute "if";

(b) in paragraph (b), at the beginning, insert "in a case in which the decision to refer was taken, or is deemed to have been taken, before IP completion day,".

(3) In the heading, omit "before exit day".

Intervention to protect legitimate interests: no European intervention notice before IP completion day

51.—(1) Paragraph 25 is amended as follows.

(2) In sub-paragraph (1)—

(a) for "exit day" substitute "IP completion day";

(b) in paragraph (c), for "subsection (2) of that section" substitute "section 67(2) of the 2002 Act".

(3) In sub-paragraph (2)—

(a) for each reference to "exit day" substitute "IP completion day";

(b) for "67(1)" substitute "67(1)(a)(ii), (b) and (c)".

(4) In the heading, for "exit day" substitute "IP completion day".

52. After paragraph 25 insert—

"**25A.**—(1) This paragraph applies in a case where immediately before IP completion day—

(a) a concentration is being examined by the European Commission but the EU merger decision has not been taken in relation to the concentration, and

(b) the Secretary of State has not made a decision to give an intervention notice under section 67(2) of the 2002 Act in relation to the concentration concerned.

(2) The old legitimate interests law continues to have effect on and after IP completion day in relation to the case concerned except that—

(a) the references to "EU law" in sections 67(1)(b) and 68(2)(c) of the 2002 Act are to be read as references to "relevant separation agreement law" within the meaning of section 7C of the European Union (Withdrawal Agreement) Act 2020(**a**); and

(b) references to the EC Merger Regulation in sections 67 and 68 of the 2002 Act have the meaning given by paragraph 18.

(3) In this paragraph—

(a) "the old legitimate interests law" has the same meaning as in paragraph 25; and

(b) a concentration is being examined by the European Commission if proceedings under the EC Merger Regulation in relation to the concentration have been initiated for the purposes of Article 92 of the EU withdrawal agreement.".

Intervention to protect legitimate interests: European intervention notice before IP completion day

53.—(1) Paragraph 26 is amended as follows.

(2) In sub-paragraph (1), for "exit day" substitute "IP completion day".

(3) In sub-paragraph (2), for the words from "exit day" to the end substitute "IP completion day in connection with the matter to which the notice relates".

(4) In the heading, for "exit day" substitute "IP completion day".

54.—(1) Paragraph 27 is amended as follows.

(2) In sub-paragraph (1)—

(a) for "exit day" substitute "IP completion day";

(b) at the end of paragraph (a), insert "and";

(c) omit paragraph (c) and the "and" before it.

(3) In sub-paragraph (2)—

(a) for "exit day" substitute "IP completion day";

(b) at the end, insert—

"except that in section 68(2) of the 2002 Act—

(a) the reference to "EU law" includes a reference to "relevant separation agreement law" within the meaning of section 7C of the European Union (Withdrawal Agreement) Act 2020; and

(b) the reference to the EC Merger Regulation has the meaning given by paragraph 18. ".

55.—(1) Paragraph 28 is amended as follows.

(2) In sub-paragraph (1)—

(a) for "exit day" substitute "IP completion day";

(b) for paragraph (c) substitute—

"(c) proceedings under the EC Merger Regulation in relation to the concentration concerned have not been initiated for the purposes of Article 92 of the EU withdrawal agreement.".

(3) In sub-paragraph (2)—

(**a**) 2020 c. 1.

(a) for "exit day" substitute "IP completion day";

(b) in paragraph (b) omit "subject to paragraphs 29 to 33".

56. Omit paragraphs 29 to 33.

General savings

57. In paragraphs 34 and 35, for each reference to "exit day" substitute "IP completion day".

58. After paragraph 35 insert—

"**35A.**—(1) Section 240 of the 2002 Act(**a**) continues to have effect in respect of continued competence cases despite its repeal by regulation 59.

(2) In any case where section 240 of the 2002 Act continues to have effect by virtue of this paragraph, the reference in that section to an EU obligation is to be treated as a reference to an obligation which arises by virtue of relevant separation agreement law.

(3) In this paragraph—

"continued competence cases" means proceedings for the application of Article 101 or 102 TFEU conducted by the European Commission under Regulation 1/2003 and proceedings in connection with the control of concentrations between undertakings governed by Regulation 139/2004, for which the European Commission has competence on and after IP completion day by virtue of Part 3 of the EU withdrawal agreement;

"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, as it has effect from time to time for the purposes of relevant separation agreement law;

"Regulation 139/2004" means Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings as it has effect from time to time for the purposes of relevant separation agreement law.

EEC Merger Control (Distinct Market Investigations) Regulations 1990

35B.—(1) This paragraph applies where, on or after IP completion day, the European Commission has requested information under the second sentence of Article 19(2) of the EC Merger Regulation in relation to a case for which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) The EEC Merger Control (Distinct Market Investigations) Regulations 1990(**b**) continue to have effect on and after IP completion day in relation to the case despite their repeal by these Regulations.".

CHAPTER 3

Company Directors Disqualification Legislation

59.—(1) Part 8 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraph 36, for each reference to "exit day" substitute "IP completion day".

Name
Parliamentary Under Secretary of State
Department

Date

(**a**) As amended by S.I. 2011/1043.
(**b**) S.I. 1990/1715, as amended by S.I. 2004/1079.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) and 8B of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) and section 41(1) of the European Union (Withdrawal Agreement) Act 2000 (c. 1) in order to address deficiencies (in particular under section 8(2)(c) and (d) of the European Union (Withdrawal) Act 2018) arising from the withdrawal of the United Kingdom from the European Union, and to give effect to measures in Title X of Part 3 of the Withdrawal Agreement as they relate to the field of competition law.

These Regulations amend the Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93) ("the principal Regulations"). The principal Regulations come into force on exit day. Paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1) provides that references to subordinate legislation coming into force on exit day are to be read instead as references to coming into force on IP completion day.

These Regulations amend the principal Regulations to-

- replace references to exit day with references to IP completion day where this is appropriate;
- make transitional provision in relation to cases in which the European Commission will continue to have competence in accordance with Article 92 of the Withdrawal Agreement;
- make provision in relation to cases in which responsibility for the monitoring and enforcement of remedies imposed by the European Commission is transferred to a national competition authority in accordance with Article 95 of the Withdrawal Agreement, empowering the Competition and Markets Authority and concurrent regulators to monitor and enforce transferred EU anti-trust commitments, transferred EU anti-trust directions and transferred EU merger commitments;
- make clarifications to the transitional provisions that apply in relation to claims for damages for loss arising out of competition infringements;
- revoke Regulation (EU) No 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, which would otherwise be retained EU law.

Part 2 amends the principal Regulations to amend the Competition Act 1998 (c.41). Part 3 amends the principal Regulations to amend the Enterprise Act 2002 (c. 40). Part 4 makes amendments to the principal Regulations to amend other primary legislation. Part 5 makes amendments to the principal Regulations to amend subordinate legislation. Part 6 makes amendments to the principal Regulations to make further amendments and provisions relating to the revocation of retained EU law. Part 7 amends the transitional and savings provisions in the principal Regulations, in particular, to clarify the transitional provisions which apply in relation to claims for damages for loss arising out of competition infringements and make some amendments in relation to the transitional provisions that apply in respect of certain merger cases which are ongoing at the end of the transition period to ensure that they implement the Withdrawal Agreement.

An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

© Crown copyright 2020

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202009301005 10/2020 19585

http://www.legislation.gov.uk/id/ukdsi/2020/9780348212679

ISBN 978-0-34-821267-9

9 780348 212679