



# Digital Markets, Competition and Consumers Act 2024

## 2024 CHAPTER 13

### PART 1

#### DIGITAL MARKETS

#### CHAPTER 6

##### INVESTIGATORY POWERS ETC AND COMPLIANCE REPORTS

PROSPECTIVE

#### *Investigatory powers etc*

#### **69 Power to require information**

- (1) For the purpose of exercising, or deciding whether to exercise, any of its digital markets functions, the CMA may require a person (“P”) to give specified information to it where it considers that the information is relevant to a digital markets function.
- (2) The power conferred by [subsection \(1\)](#) is to be exercised by giving P a notice (an “information notice”).
- (3) The CMA must include in an information notice—
  - (a) the time and place at which the specified information must be given to the CMA;
  - (b) the manner and form in which the information must be given to the CMA;
  - (c) information about the possible consequences of not complying with the notice.

*Status:* This version of this cross heading contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Cross Heading: Investigatory powers etc. (See end of Document for details)

- (4) The power under [this section](#) to require P to give information to the CMA includes the power to—
- (a) take copies of or extracts from information;
  - (b) require P to obtain or generate information;
  - (c) require P to collect or retain information that they would not otherwise collect or retain;
  - (d) if any specified information is not given to the CMA, require P to state, to the best of their knowledge and belief, both where that information is and why it has not been given to the CMA.
- (5) For the purposes of [subsection \(4\)\(b\)](#), the CMA may include in an information notice—
- (a) a requirement for P to vary their usual conduct (whether in relation to some or all users or potential users of any service or digital content that P provides);
  - (b) a requirement for P to perform a specified demonstration or test.
- (6) In this section, “specified” means—
- (a) specified, or described, in the information notice, or
  - (b) falling within a category which is specified, or described, in the information notice.
- (7) The powers conferred by this section are exercisable in relation to information whether it is stored within or outside the United Kingdom.

#### Commencement Information

**II** S. 69 not in force at Royal Assent, see [s. 339\(1\)](#)

## 70 Requirement to name a senior manager

- (1) Where the CMA gives an information notice to a designated undertaking or an undertaking that is the subject of a breach investigation, the CMA may include in the notice a requirement that the undertaking must name, in response to the notice, an individual who—
  - (a) the undertaking considers to be a senior manager of the undertaking, and
  - (b) may reasonably be expected to be in a position to ensure compliance with the requirements of the notice.
- (2) Where the CMA imposes a requirement to name an individual, the information notice must require the undertaking to inform the individual about the consequences for the individual of any failure by the undertaking to comply with the notice (see [section 87](#)).
- (3) An individual can be considered to be a senior manager of an undertaking only if the individual plays a significant role in—
  - (a) making decisions about how the undertaking’s relevant activities are to be managed or organised, or
  - (b) managing or organising the undertaking’s relevant activities.
- (4) An undertaking’s “relevant activities” are activities relating to the undertaking’s compliance with requirements imposed on it by or under this Part.

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### Commencement Information

**I2** S. 70 not in force at Royal Assent, see [s. 339\(1\)](#)

## 71 Power of access

- (1) The CMA may exercise the powers in [this section](#) where it considers that a designated undertaking or an undertaking that is the subject of a breach investigation—
  - (a) has not complied with the requirements of an information notice (see [section 69](#)), or
  - (b) has not complied with the duty to assist a skilled person with the preparation of a report (see [section 79\(12\)](#)).
- (2) The CMA may access business premises, equipment, services, information or individuals in order to—
  - (a) supervise the obtaining, generation, collection or retention of information by the undertaking,
  - (b) observe the undertaking’s conduct in relation to users, or
  - (c) observe a demonstration or test performed by the undertaking,for the purpose of securing compliance with requirements imposed on the undertaking under [section 69](#) or [section 79\(12\)](#).
- (3) Where the CMA requires access under subsection (2), it must give the undertaking a notice specifying—
  - (a) the access that it requires,
  - (b) a date by which the access must be provided, and
  - (c) the manner in which the access must be provided (which may be remote).
- (4) The undertaking must give the CMA the access specified in the notice under [subsection \(3\)](#).
- (5) The powers conferred by this section are not exercisable in relation to premises, equipment or individuals outside the United Kingdom.
- (6) But the powers conferred by this section are exercisable in relation to information and services whether stored or provided within or outside the United Kingdom.
- (7) In this Chapter, “business premises” means premises (or any part of premises) not used as a dwelling.

### Commencement Information

**I3** S. 71 not in force at Royal Assent, see [s. 339\(1\)](#)

## 72 Power to interview

- (1) If the CMA considers that an individual (“X”) has information relevant to a digital markets investigation, the CMA may give a notice to X requiring X to answer questions with respect to any matter relevant to that digital markets investigation—
  - (a) at a place or in a manner (which may be remote) specified in the notice, and
  - (b) either at a time specified in the notice or on receipt of the notice.

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- (2) The CMA must include in the notice—
  - (a) details of the digital markets investigation;
  - (b) information about the possible consequences of not complying with the notice.
- (3) Where X is connected to (see section 118(3)) the undertaking that is the subject of the digital markets investigation, the CMA must give a copy of the notice under subsection (1) to the undertaking.
- (4) The CMA must comply with the requirement under subsection (3)—
  - (a) at the time the notice is given to X, or
  - (b) where that is not practicable, as soon as reasonably practicable after the notice is given to X.
- (5) The CMA, or any person nominated by it, may take evidence in answer to questions under subsection (1) on oath, and for that purpose may administer oaths.
- (6) The powers conferred by this section are not exercisable in relation to an individual outside the United Kingdom.

#### Commencement Information

**I4** S. 72 not in force at Royal Assent, see s. 339(1)

### 73 Use of interview statements in prosecution

- (1) A statement by X in response to a requirement imposed by virtue of section 72 (a “section 72 statement”) may only be used in evidence against X—
  - (a) on a prosecution for an offence under section 93 or 94;
  - (b) on a prosecution for some other offence in a case falling within subsection (2).
- (2) A prosecution falls within this subsection if, in the proceedings—
  - (a) in giving evidence, X makes a statement inconsistent with the section 72 statement, and
  - (b) evidence relating to the section 72 statement is adduced, or a question relating to it is asked, by or on behalf of X.

#### Commencement Information

**I5** S. 73 not in force at Royal Assent, see s. 339(1)

### 74 Power to enter business premises without a warrant

- (1) For the purposes of a breach investigation, the CMA may authorise an officer of the CMA (“an investigating officer”) to enter any business premises (see section 71(7)) and exercise the powers in subsection (5) if the CMA has reasonable grounds to suspect that information is on or accessible from the premises that is relevant to the breach investigation.

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- (2) No investigating officer is to enter any premises in the exercise of their powers under [this section](#) unless they have given to the occupier of the premises a notice which—
- (a) gives at least two working days’ notice of the intended entry,
  - (b) describes the subject matter and purpose of the breach investigation, and
  - (c) includes information about the possible consequences of not complying with the notice.
- (3) [Subsection \(2\)](#) does not apply if—
- (a) the CMA has a reasonable suspicion that the premises are, or have been, occupied by the undertaking which is the subject of the breach investigation, or
  - (b) the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within [subsection \(3\)](#), the power of entry conferred by [subsection \(1\)](#) is to be exercised by the investigating officer on production of—
- (a) evidence of their authorisation, and
  - (b) a document containing the information referred to in paragraphs (b) and (c) of [subsection \(2\)](#).
- (5) An investigating officer may, in addition to entering any premises—
- (a) take with them such equipment as appears to them to be necessary;
  - (b) require any person on the premises to—
    - (i) give information to the officer which the officer considers relevant to the breach investigation;
    - (ii) if any required information is not given to the officer, state, to the best of the person’s knowledge and belief, where that information may be found;
  - (c) take copies of, or extracts from, any information given to an investigating officer;
  - (d) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any information which the officer considers relevant to the breach investigation.
- (6) Any information which is given to an investigating officer under [subsection \(5\)](#) must be in a form—
- (a) in which it can be taken away, and
  - (b) which is visible and legible or from which it can be readily be generated in a visible and legible form.
- (7) The powers conferred by [this section](#) are not exercisable in relation to premises outside the United Kingdom.
- (8) But the powers conferred by this section are exercisable in relation to information whether it is stored within or outside the United Kingdom.

#### Commencement Information

**16** S. 74 not in force at Royal Assent, see [s. 339\(1\)](#)

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## 75 Power to enter premises under a warrant

- (1) On an application made to it by the CMA for the purposes of a breach investigation, the court or the Tribunal may issue a warrant if it is satisfied that—
  - (a) there are reasonable grounds for suspecting that there is information on or accessible from any premises which is relevant to the breach investigation (“information of the relevant kind”), and
  - (b) one or both of the following applies—
    - (i) the exercise by the CMA of another digital markets investigation power has not resulted in the CMA being given the information of the relevant kind;
    - (ii) there are reasonable grounds for suspecting that there is no other digital markets investigation power the exercise of which would result in the CMA being given the information of the relevant kind.
- (2) A warrant under [this section](#) authorises a named officer of the CMA (“the authorised officer”), and any other of the CMA’s officers whom the CMA has authorised in writing to accompany the authorised officer, to—
  - (a) enter the premises specified in the warrant, using such force as is reasonably necessary;
  - (b) take onto the premises such equipment as appears to the authorised officer to be necessary;
  - (c) search the premises for information appearing to be information of the relevant kind;
  - (d) operate any equipment found on the premises for the purpose of producing information;
  - (e) require any person on the premises to provide such assistance as the authorised officer may reasonably require (including providing passwords or encryption keys and operating equipment on the premises);
  - (f) require any person on the premises to give information to the authorised officer;
  - (g) require any person on the premises to state, to the best of their knowledge and belief, where information appearing to be of the relevant kind may be found;
  - (h) take copies of, or extracts from, any information appearing to be information of the relevant kind;
  - (i) take possession of any information appearing to be information of the relevant kind that is produced under paragraph (d) or given to the authorised officer under [paragraph \(f\)](#);
  - (j) take possession of any other information appearing to be information of the relevant kind if—
    - (i) such action appears to be necessary for preserving the information or preventing interference with it, or
    - (ii) it is not reasonably practicable to take copies of the information on the premises;
  - (k) take any other steps which appear to be necessary for the purpose of preserving any information appearing to be information of the relevant kind or preventing interference with it.
- (3) Any information which is given to an investigating officer under subsection (2) must be in a form—
  - (a) in which it can be taken away, and

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- (b) which is visible and legible or from which it can be readily be generated in a visible and legible form.
- (4) A warrant under [this section](#) may authorise persons specified in the warrant to accompany the authorised officer who is executing it.
- (5) A warrant under [this section](#) continues in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any information which the CMA obtains under [subsection \(2\)](#) may be retained for a period of three months.
- (7) For the purposes of [this section](#) and section [76](#)—
- “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—
- (a) premises also used in connection with the affairs of an undertaking or, where the undertaking is part of a group, a member of that group, or
- (b) premises where information relating to the affairs of an undertaking or, where the undertaking is part of a group, a member of that group, is located;
- “occupier”, in relation to any premises, means a person whom the authorised officer reasonably believes is the occupier of those premises;
- “premises” includes business premises (see section [71\(7\)](#)) and domestic premises.

#### Commencement Information

**I7** S. 75 not in force at Royal Assent, see [s. 339\(1\)](#)

## **76 Power to enter premises under a warrant: supplementary**

- (1) A warrant under [section 75](#) must describe—
- (a) the subject matter and purpose of the breach investigation, and
- (b) the offence created by [section 95](#).
- (2) The powers conferred by [section 75](#) are to be exercised on production of the warrant issued under that section.
- (3) If there is no one at the premises when the authorised officer proposes to execute the warrant they must, before executing it—
- (a) take reasonable steps to inform the occupier of the intended entry, and
- (b) if the occupier is informed, afford them or their legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the authorised officer is unable to inform the occupier of the intended entry they must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) On leaving any premises which they have entered by virtue of a warrant under [section 75](#), the authorised officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as they found them.



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- (6) The powers conferred by [section 75](#) are not exercisable in relation to premises outside the United Kingdom.
- (7) But the powers conferred by [section 75](#) are exercisable in relation to information whether it is stored within or outside the United Kingdom.

#### Commencement Information

**18** S. 76 not in force at Royal Assent, see [s. 339\(1\)](#)

### 77 Amendments to the Criminal Justice and Police Act 2001

- (1) The Criminal Justice and Police Act 2001 is amended as follows.
- (2) In section 50 (additional powers of seizure from premises), at the end insert—
- “(7) Without prejudice to any power conferred by this section to take a copy of any document, nothing in this section, so far as it has effect by reference to the power to take copies of, or extracts from, information under [section 75\(2\)\(h\)](#) of the Digital Markets, Competition and Consumers Act 2024, is to be taken to confer any power to seize any information.”
- (3) In section 57 (retention of seized items), in subsection (1), at the end insert—
- “(v) [section 75\(6\)](#) of the Digital Markets, Competition and Consumers Act 2024.”
- (4) In section 63 (powers of seizure: copies), in subsection (1), at the end insert—
- “(d) for the purposes of this Part, except sections 50 and 51, the powers in [section 75\(2\)\(d\)](#) and [\(f\)](#) of the Digital Markets, Competition and Consumers Act 2024 are to be treated as powers of seizure, and references to seizure and to seized property are to be construed accordingly.”
- (5) In section 64 (meaning of “appropriate judicial authority”), in subsection (3), in paragraph (a), at the end insert—
- “(iv) [section 75\(2\)](#) of the Digital Markets, Competition and Consumers Act 2024.”
- (6) In section 65 (meaning of “legal privilege”), after subsection (3A) insert—
- “(3B) In relation to property which has been seized in exercise, or purported exercise, of—
- (a) the power of seizure conferred by [section 75\(2\)](#) of the Digital Markets, Competition and Consumers Act 2024, or
- (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power,
- references in this Part to an item subject to legal privilege are to be read as references to a privileged communication within the meaning of [section 81](#) (privileged communications) of that Act.”
- (7) In section 66 (general interpretation of Part 2), in subsection (5), after paragraph (i) insert—



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“(j) section 75(2)(j) of the Digital Markets, Competition and Consumers Act 2024;”

- (8) In Part 1 of Schedule 1 (powers of seizure to which section 50 of that Act applies), at the end insert—

“73W Digital Markets, Competition and Consumers Act 2024

Each of the powers of seizure conferred by section 75(2)(i) and (j) of the Digital Markets, Competition and Consumers Act 2024 (seizure of information for the purposes of a breach investigation).”

#### Commencement Information

**19** S. 77 not in force at Royal Assent, see [s. 339\(1\)](#)

### 78 Application for a warrant

- (1) An application for a warrant under [section 75](#) must be made—
- in the case of an application to the court, in accordance with rules of court;
  - in the case of an application to the Tribunal, in accordance with Tribunal rules.
- (2) In Schedule 4 to EA 2002 (tribunal: procedure), in paragraph 10A, in subparagraph (1), after “the 1998 Act” insert “or [section 75](#) of the Digital Markets, Competition and Consumers Act 2024”.

#### Commencement Information

**110** S. 78 not in force at Royal Assent, see [s. 339\(1\)](#)

### 79 Reports by skilled persons

- (1) The CMA may exercise the powers in [this section](#) in relation to a designated undertaking, an undertaking that is the subject of a breach investigation or an undertaking that is the subject of an SMS investigation (in each case, “U”) for the purpose of exercising, or deciding whether to exercise, any of its digital markets functions.
- (2) The CMA may appoint a skilled person to provide it with a report in a specified form about matters relevant to the purposes for which the powers under [this section](#) are or may be exercised (“the relevant matters”).
- (3) Where the CMA makes such an appointment, the CMA must give a notice to U—
- confirming the appointment;
  - specifying the relevant matters.
- (4) A notice under [subsection \(3\)](#) may also make provision for U to be liable for payment, directly to the skilled person, of the skilled person’s remuneration and expenses relating to the preparation of the report.
- (5) As an alternative to [subsection \(2\)](#), the CMA may give a notice to U—
- requiring U to appoint a skilled person to provide the CMA with a report in such form as may be specified in the notice;

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- (b) specifying the relevant matters to be explored in the report;
  - (c) specifying the date by which the report must be provided.
- (6) Where the skilled person is to be appointed by U, U may not make an appointment unless the CMA has approved in writing—
- (a) the identity of the skilled person, and
  - (b) the terms on which they will be appointed, including in relation to their remuneration and expenses.
- (7) [Subsections \(8\) to \(10\)](#) apply in relation to an amount due to a skilled person from U under [this section](#).
- (8) In England and Wales, such an amount is recoverable—
- (a) if the county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (9) In Scotland, such an amount may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (10) In Northern Ireland, such an amount is recoverable—
- (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (11) References in [this section](#) to a skilled person are to a person appearing to the CMA to have the skills necessary to prepare a report about the relevant matters.
- (12) It is the duty of—
- (a) U, and
  - (b) any person connected to (see [section 118\(3\)](#)) U,
- to give a skilled person who has been appointed under this section all such assistance (including access to such business premises (see [section 71\(7\)](#)), equipment, services, information and individuals) as the skilled person may reasonably require to prepare the report.
- (13) The duty in [section 79\(12\)](#) does not include a duty to give access to premises, equipment or individuals outside the United Kingdom.
- (14) But the duty in [section 79\(12\)](#) does include a duty to give access to information and services whether stored or provided within or outside the United Kingdom.

#### Commencement Information

**111** S. 79 not in force at Royal Assent, see [s. 339\(1\)](#)

## 80 Duty to preserve information

- (1) A person to whom any of subsections (2), (3), (4) and (5) applies must not, without reasonable excuse—
- (a) destroy, otherwise dispose of, falsify or conceal, or
  - (b) cause or permit the destruction, disposal, falsification or concealment of, any relevant information.

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- (2) This subsection applies to a person where the person knows or suspects that a breach investigation or a PCI investigation is being or is likely to be carried out in relation to an undertaking.
- (3) This subsection applies to a person where the person is, or is connected to (see section 118(3)), an undertaking that is not a designated undertaking and knows that the undertaking is the subject of an initial SMS investigation.
- (4) This subsection applies to a person where the person is, or is connected to, a designated undertaking and knows that—
  - (a) the undertaking is required to produce a compliance report under section 84, or
  - (b) the undertaking is the subject of a further SMS investigation.
- (5) This subsection applies to a person where the person is, or is connected to, an undertaking and knows or suspects that the CMA is assisting, or is likely to assist, an overseas regulator in carrying out, in relation to the undertaking, any of its functions which correspond or are similar to the functions of the CMA under this Part (see Chapter 2 of Part 5 (provision of investigative assistance to overseas regulators)).
- (6) For the purposes of this section, relevant information is information which the person knows or suspects is or would be—
  - (a) relevant to the investigation mentioned in subsection (2), (3), (4) or (5), as the case may be,
  - (b) used by an undertaking to produce the compliance report, or
  - (c) relevant to the provision of assistance to the overseas regulator.

#### Commencement Information

I12 S. 80 not in force at Royal Assent, see s. 339(1)

## 81 Privileged communications

- (1) A person may not be required under any provision of this Chapter to produce, generate or give to the CMA or an officer of the CMA a privileged communication.
- (2) Nothing in this Chapter authorises the CMA or an officer of the CMA to produce or take possession of, or take copies of or extracts from, a privileged communication (but this is subject to Part 2 of the Criminal Justice and Police Act 2001, as amended by section 77 of this Act).
- (3) A “privileged communication” is a communication—
  - (a) between a professional legal adviser and their client, or
  - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (4) In the application of this section to Scotland—
  - (a) the reference to the High Court is to be read as a reference to the Court of Session, and
  - (b) the reference to legal professional privilege is to be read as a reference to the confidentiality of communications.

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**Commencement Information**

**I13** S. 81 not in force at Royal Assent, see [s. 339\(1\)](#)

**82 Power of CMA to publish notice of investigative assistance**

- (1) Where the CMA assists an overseas regulator in carrying out any of its functions which correspond or are similar to the functions of the CMA under this Part (see [Chapter 2](#) of [Part 5](#) (provision of investigative assistance to overseas regulators)), the CMA may publish a notice of its decision to do so which may, in particular—
- (a) identify the overseas regulator concerned;
  - (b) summarise the matter in respect of which the assistance is requested;
  - (c) identify the undertaking in respect of which the assistance is requested.
- (2) Section [112](#) does not apply to a notice under subsection (1) to the extent that it includes information other than information mentioned in that subsection.

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**Commencement Information**

**I14** S. 82 not in force at Royal Assent, see [s. 339\(1\)](#)

**Status:**

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**Changes to legislation:**

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