



# Digital Markets, Competition and Consumers Act 2024

## 2024 CHAPTER 13

### PART 1

#### DIGITAL MARKETS

#### CHAPTER 7

#### ENFORCEMENT AND APPEALS

#### *Civil penalties*

### **85 Penalties for failure to comply with competition requirements**

- (1) Where the CMA considers that an undertaking has, without reasonable excuse, failed to comply with a requirement listed in [subsection \(2\)](#), it may impose a penalty on the undertaking.
- (2) The requirements are—
  - (a) a requirement imposed by virtue of an enforcement order under [section 31](#) or [section 32](#),
  - (b) a requirement imposed by virtue of a final offer order under [section 41](#) (including a requirement imposed in reliance on [section 42](#)),
  - (c) a requirement imposed by virtue of a pro-competition order under [section 46](#), and
  - (d) the requirement to comply with a commitment given under [section 36](#) or [56](#).
- (3) The CMA may impose a penalty on an undertaking where the CMA considers that the undertaking has, without reasonable excuse, failed to comply with a conduct requirement under [section 19](#).

- (4) The CMA may impose a penalty on an undertaking or, where the undertaking is part of a group, the group, where the CMA considers that the undertaking or any member of the group has, without reasonable excuse, failed to comply with a requirement in [Chapter 5](#) (mergers).

## **86 Amount of penalties under section 85**

- (1) The amount of a penalty imposed on a person under section 85 may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsection (4).
- (2) The amount of a penalty under section 85(1) must be—
- a fixed amount,
  - an amount calculated by reference to a daily rate, or
  - a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The amount of a penalty under section 85(3) or (4) must be a fixed amount.
- (4) The maximum amounts of a penalty that may be imposed are—
- in the case of a fixed amount, an amount equal to 10% of the total value of the turnover of the undertaking or, where the undertaking is part of a group, the turnover of the group;
  - in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the daily turnover of the undertaking or, where the undertaking is part of a group, the daily turnover of the group;
  - in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.
- (5) In subsection (4), references to the total value of the turnover or daily turnover of an undertaking or group are to the total value of the turnover or daily turnover of the undertaking or, as the case may be, group, both inside and outside the United Kingdom.

## **87 Penalties for failure to comply with investigative requirements**

- (1) The CMA may impose a penalty on a person where it considers that the person has, without reasonable excuse—
- failed to comply with a requirement imposed by or under [Chapter 6](#),
  - given information which is false or misleading in a material particular in connection with any function of the CMA under this Part, or
  - given information which is false or misleading in a material particular to another person knowing that the information was to be used for the purpose of giving information to the CMA in connection with any function of the CMA under this Part.
- (2) The CMA may impose a penalty on an individual named as a senior manager under [section 70](#) as well as on the undertaking that names the individual where—
- the CMA considers that the individual has failed, without reasonable excuse, to prevent a failure or an action by the undertaking of a sort mentioned in subsection (1), and

- (b) the failure or action relates to an information notice in response to which the individual was named as a senior manager.
- (3) The CMA may impose a penalty on an individual who is appointed by an undertaking to be a nominated officer under [section 83](#) in relation to a digital markets requirement (within the meaning of that section), as well as on the undertaking that appoints the individual, where the CMA considers that the individual has failed, without reasonable excuse, to prevent the undertaking from failing to comply with a requirement in or under [section 84](#) (compliance reports) in relation to that digital markets requirement.
- (4) The CMA may impose a penalty on an individual where it considers that the individual has, without reasonable excuse, obstructed an officer of the CMA acting in the exercise of the officer's powers under—
  - (a) [section 74](#), or
  - (b) a warrant issued under [section 75](#).

## **88 Amount of penalties under [section 87](#)**

- (1) The amount of a penalty imposed on a person under [section 87](#) may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsections [\(3\)](#) and [\(5\)](#).
- (2) The amount of a penalty under [section 87](#) must be—
  - (a) a fixed amount,
  - (b) an amount calculated by reference to a daily rate, or
  - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The maximum amounts of a penalty that may be imposed on an undertaking that is not an individual are—
  - (a) in the case of a fixed amount, an amount equal to 1% of the total value of the person's turnover (both inside and outside the United Kingdom);
  - (b) in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the person's daily turnover (both inside and outside the United Kingdom);
  - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.
- (4) Where a person is an undertaking that is part of a group, references in subsection [\(3\)](#) to the person's turnover are to the turnover of that group.
- (5) The maximum amounts of a penalty that may be imposed on an individual or a person that is not an undertaking are—
  - (a) in the case of a fixed amount, £30,000,
  - (b) in the case of an amount calculated by reference to a daily rate, £15,000 per day, or
  - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate.

- (6) The Secretary of State may by regulations amend the amounts mentioned in paragraphs (a) and (b) of subsection (5).
- (7) The Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate before making regulations under subsection (6).
- (8) Regulations under subsection (6) are subject to the affirmative procedure.

## **89 Procedure and appeals etc**

- (1) Sections 112 (penalties: main procedural requirements), 113 (payments and interest by instalments), 114 (appeals), and 115 (recovery of penalties) of EA 2002 apply in relation to a penalty imposed under section 85 or 87 as they apply in relation to a penalty imposed under section 110(1) of that Act.
- (2) For the purposes of this section—
  - (a) sections 112 to 115 of EA 2002 are to be read as if references to “the appropriate authority” were references to “the CMA” only;
  - (b) section 114(5A) of that Act is to be read as if the words “In the case of a penalty imposed on a person by the CMA or OFCOM,” were omitted;
  - (c) section 114(12) of that Act is to be read as if, for paragraph (b), there were substituted—
    - “(b) “the relevant guidance” means the statement of policy which was most recently published under section 91 of the Digital Markets, Competition and Consumers Act 2024 at the time of the act or omission giving rise to the penalty.”

## **90 Calculation of daily rates and turnover**

- (1) In imposing a penalty by reference to a daily rate—
  - (a) no account is to be taken of any days before the service on the person concerned of the provisional penalty notice under section 112(A1) of EA 2002 (as applied by section 89), and
  - (b) unless the CMA determines an earlier day (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of—
    - (i) the day on which the person first complies with the requirement in question, or
    - (ii) if earlier, where the requirement was imposed in connection with the provision by the CMA of assistance to an overseas regulator (see section 319 (provision of investigative assistance to overseas regulators)), the day on which the overseas regulator no longer requires that assistance.
- (2) The Secretary of State may by regulations make provision for determining the turnover (both inside and outside the United Kingdom) of a person for the purposes of this Chapter.
- (3) The regulations may (among other things)—
  - (a) make provision about amounts which are, or are not, to be included in a person’s turnover;
  - (b) make provision about the date or dates by reference to which a person’s turnover is to be determined;

- (c) confer on the CMA the power to determine and make provision about matters specified in the regulations (including the matters mentioned in paragraphs (a) and (b)).
- (4) Regulations under subsection (2) are subject to the negative procedure.

## 91 Statement of policy on penalties

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of powers to impose a penalty under sections 85 and 87.
- (2) The statement must include a statement about the considerations relevant to the determination of—
- (a) whether to impose a penalty under section 85 or 87;
  - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) In preparing or revising its statement of policy the CMA must consult—
- (a) the Secretary of State, and
  - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under [this section](#) without the approval of the Secretary of State.
- (6) Subsection (7) applies where the CMA proposes to impose a penalty on a person.
- (7) The CMA must have regard to the statement of policy most recently published under this section at the time of the act or omission giving rise to the penalty when deciding—
- (a) whether to impose the penalty, and
  - (b) if so, the amount of the penalty.

## 92 Monetary penalties: criminal proceedings and convictions

- (1) The CMA may not impose a penalty on a person under section 87 in relation to an act or omission which constitutes an offence under section 93, 94 or 95 if the person has, in relation to that act or omission, been found guilty of that offence.
- (2) A person may not be found guilty of an offence under section 93, 94 or 95 by virtue of an act or omission if the person has paid a penalty imposed under section 87 in relation to that act or omission.

### *Offences*

## 93 Destroying or falsifying information

- (1) A person (“P”) commits an offence if, having been required to give information to the CMA or any other person under a provision of [Chapter 6](#), P—
- (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
  - (b) causes or permits its destruction, disposal, falsification or concealment.

- (2) See [section 97](#) for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

#### **94 False or misleading information**

- (1) A person (“P”) commits an offence if—
- (a) P gives information to the CMA in connection with any of the CMA’s digital markets functions,
  - (b) the information is false or misleading in a material particular, and
  - (c) P knows that it is or is reckless as to whether it is.
- (2) A person (“P”) commits an offence if P gives information to another person which is false or misleading in a material particular and P—
- (a) either—
    - (i) knows the information to be false or misleading in a material particular, or
    - (ii) is reckless as to whether the information is false or misleading in a material particular, and
  - (b) knows that the information will be given to the CMA in connection with any of its digital markets functions.
- (3) See [section 97](#) for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

#### **95 Obstructing an officer**

- (1) A person (“P”) commits an offence if P intentionally obstructs an officer of the CMA acting in the exercise of the officer’s powers under—
- (a) [section 74](#), or
  - (b) a warrant issued under [section 75](#).
- (2) See [section 97](#) for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

#### **96 Offences by officers of a body corporate etc**

- (1) If an offence under [section 93](#), [94](#) or [95](#) committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to neglect on the part of an officer of the body corporate, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate.
- (3) If an offence under [section 93](#), [94](#) or [95](#) committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to neglect on the partner’s part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

- (4) In subsection (3), “partner” includes a person purporting to act as a partner.
- (5) See [section 97](#) for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

## 97 Offences: limits on extra-territorial jurisdiction

A person does not commit an offence under [section 93](#), [94](#) or [95](#) (including as those sections are applied by [section 96](#)) by virtue of an act done when the person is outside the United Kingdom unless one or more of the following applies at the time of the act—

- (a) the person is a United Kingdom national;
- (b) the person is an individual who is habitually resident in the United Kingdom;
- (c) the person is a body incorporated under the law of any part of the United Kingdom.

## 98 Sentences

A person guilty of an offence under [section 93](#), [94](#) or [95](#) is liable—

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

*Further enforcement provisions etc*

## 99 Director disqualification

- (1) In the Company Directors Disqualification Act 1986, in section 9A (competition disqualification order), in subsection (4)—

- (a) in the words before paragraph (a), for “either” substitute “any”;
- (b) at the end insert—
  - “(e) a requirement imposed by or under [Chapter 3](#) of Part 1 of the Digital Markets, Competition and Consumers Act 2024 (undertakings with strategic market status in respect of a digital activity: conduct requirements);
  - (f) a requirement imposed by or under [Chapter 4](#) of Part 1 of that Act (pro-competition interventions).”

- (2) In the Company Directors Disqualification (Northern Ireland) Order 2002 ([S.I. 2002/3150 \(N.I. 4\)](#)), in Article 13A (competition disqualification order), in paragraph (4)—

- (a) in the words before paragraph (a), for “either” substitute “any”;
- (b) at the end insert—
  - “(e) a requirement imposed by or under [Chapter 3](#) of Part 1 of the Digital Markets, Competition and Consumers Act 2024

- (undertakings with strategic market status in respect of a digital activity: conduct requirements);
- (f) a requirement imposed by or under [Chapter 4](#) of Part 1 of that Act (pro-competition interventions).”

## 100 Enforcement of requirements

- (1) If a person fails, without reasonable excuse, to comply with a requirement mentioned in [subsection \(2\)](#) (a “[subsection \(2\)](#) requirement”), the CMA may apply to the court for an order—
- (a) requiring the person to comply with the [subsection \(2\)](#) requirement within a time specified in the court’s order, or
  - (b) if the [subsection \(2\)](#) requirement related to anything to be done in the management or administration of an undertaking, requiring the undertaking, or any of its officers, members or partners, to do it.
- (2) The requirements are—
- (a) a requirement imposed by virtue of an enforcement order (see [section 31](#) and [section 32](#));
  - (b) a requirement to comply with a commitment given under [section 36](#) or [56](#);
  - (c) a requirement imposed by virtue of a final offer order (see [section 41\(2\)](#) and [section 42](#));
  - (d) a requirement imposed by virtue of a pro-competition order (see [section 46](#)).
- (3) An order of the court under [subsection \(1\)](#) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
- (a) the person that failed to comply with the [subsection \(2\)](#) requirement, or
  - (b) where the person responsible for the failure is an undertaking, any officer of a body corporate that is or is comprised in that undertaking.
- (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](#), references to an “officer”, “member” or “partner” of an undertaking are to an officer, member or partner of a body corporate or, as the case may be, partnership, that is, or is comprised in, the undertaking.

## 101 Rights to enforce requirements of this Part

- (1) A relevant requirement is to be treated as a duty owed by the person that is subject to the requirement to any other person (“P”) who may be affected by a breach of the requirement.
- (2) Where a breach of a relevant requirement causes P to sustain loss or damage, P may bring civil proceedings against the person that has breached the requirement before the appropriate court or the Tribunal for damages, an injunction or interdict or any other appropriate relief or remedy.
- (3) Subsections (1) and (2) are subject to the defences and other incidents applying to actions for breach of statutory duty.
- (4) For the purposes of this section and [section 102](#), a relevant requirement is—
- (a) a conduct requirement under [section 19](#);



- (b) a requirement imposed by virtue of a pro-competition order under section 46;
  - (c) a requirement to comply with a commitment given under section 36 or 56.
- (5) Rules of court and Tribunal rules may make provision about the transfer from the Tribunal to the appropriate court or from the appropriate court to the Tribunal of all or any part of a claim made in proceedings under subsection (2).
- (6) For the purposes of this section and section 102, the “appropriate 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 or a sheriff court of any sheriffdom.
- (7) In Schedule 4 to EA 2002 (tribunal: procedure), in paragraph 1A, in sub-paragraph (1) after “the 1998 Act” insert “or section 101 of the Digital Markets, Competition and Consumers Act 2024”.

## **102 Treatment of CMA breach decisions etc**

- (1) The appropriate court (see section 101) and the Tribunal are bound by a CMA breach decision once it has become final.
- (2) A CMA breach decision becomes final—
  - (a) when the time for applying for a review of that decision has passed without an application being made, or
  - (b) where an application has been made, when the application has been finally determined or has otherwise ended.
- (3) For the purposes of subsection (2)(b), an application is not finally determined until any appeal relating to it has been determined (ignoring any possibility of an appeal out of time with permission).
- (4) This section applies to the extent that the appropriate court or the Tribunal would not otherwise be bound by the CMA breach decision in question.
- (5) In this section, a “CMA breach decision” is a decision by the CMA in accordance with this Part that a person has breached a relevant requirement (as defined in section 101).
- (6) Rules of court or Tribunal rules may make provision in respect of assistance to be given by the CMA to the appropriate court or the Tribunal in proceedings brought otherwise than by the CMA in respect of a breach, or an alleged breach, of a relevant requirement.

### *Applications for review*

## **103 Applications for review etc**

- (1) A person with a sufficient interest in any decision to which subsection (2) applies may apply to the Tribunal in accordance with Tribunal rules for a review of that decision.
- (2) This subsection applies to any decision made by the CMA in connection with its digital markets functions (including a decision not to exercise a function) apart from—
  - (a) a decision made by the CMA in connection with its functions under Chapter 5 (but see section 66);

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*Status: This is the original version (as it was originally enacted).*

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- (b) a decision about the imposition of a penalty under section 85 or 87 (but see section 89(1)).
- (3) The making of an application under subsection (1) does not suspend the effect of the decision to which the application relates except so far as a direction to the contrary is given by the Tribunal.
- (4) In determining an application under this section, the Tribunal must apply the same principles as would be applied—
  - (a) in the case of proceedings in England and Wales or Northern Ireland, by the High Court in determining proceedings on judicial review;
  - (b) in the case of proceedings in Scotland, by the Court of Session on an application to the supervisory jurisdiction of that Court.
- (5) The Tribunal may—
  - (a) dismiss the application or quash the whole or part of the decision to which it relates, and
  - (b) where it quashes the whole or part of that decision, refer the matter back to the CMA with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Tribunal under this section to the appropriate court.
- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section, “the appropriate court” means—
  - (a) in relation to England and Wales or Northern Ireland, the Court of Appeal, or
  - (b) in relation to Scotland, the Court of Session.