



Digital Markets, Competition and Consumers Act 2024

2024 CHAPTER 13

PART 3

ENFORCEMENT OF CONSUMER PROTECTION LAW

CHAPTER 4

DIRECT ENFORCEMENT POWERS OF CMA

PROSPECTIVE

Undertakings

185 Undertakings

- (1) [This section](#) applies where the CMA—
 - (a) has started an investigation under [section 180](#) which is continuing, and
 - (b) has not given a final infringement notice or an online interface notice in relation to the matter under investigation.
- (2) The CMA may accept an undertaking under [this section](#) in connection with that matter from any person whom the CMA believes—
 - (a) has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement (“the infringing practice”), or
 - (b) is an accessory to such a practice.
- (3) Subsections (1) to (6) of [section 164](#) (inclusion of enhanced consumer measures in undertakings) apply to an undertaking under this section as they apply to an undertaking under [section 163\(2\)](#).

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: Undertakings. (See end of Document for details)

- (4) An undertaking under [this section](#) is an undertaking to do one or more of the following—
- (a) in the case of an undertaking from a person within [subsection \(2\)\(a\)](#), not to continue or repeat the infringing practice (where the CMA believes the person has engaged or is engaging in the practice);
 - (b) in the case of an undertaking from a person within [subsection \(2\)\(b\)](#), not to consent to or connive in the infringing practice;
 - (c) in either case, not to engage in the infringing practice in the course of the person’s business or another business;
 - (d) in either case, not to consent to, or connive in, the carrying out of the infringing practice by a body corporate with which the person has a special relationship (see [section 220](#)).
- (5) Where the CMA has accepted from a person an undertaking under [this section](#)—
- (a) the CMA may accept from the person any such variation of the undertaking that the CMA considers appropriate for meeting the purposes for which the undertaking was given;
 - (b) the CMA may release the person from the undertaking (whether on its own initiative or at the person’s request) if the CMA considers that the undertaking is no longer necessary to further those purposes.
- (6) The powers of the CMA under [this section](#) do not limit other powers of the CMA to accept, vary or release undertakings under [Chapter 3](#).

Commencement Information

II S. 185 not in force at Royal Assent, see [s. 339\(1\)](#)

186 Effect of undertakings under [section 185](#)

- (1) [This section](#) applies where the CMA accepts an undertaking from a person under [section 185](#) in connection with a matter that it was investigating under [section 180](#).
- (2) The CMA may not give a final infringement notice or an online interface notice to the person in relation to the matter.
- (3) [Subsection \(2\)](#) does not prevent the CMA from giving a final infringement notice or an online interface notice to the person—
 - (a) if and to the extent that the notice relates to anything not addressed by the acceptance of the undertaking mentioned in [subsection \(1\)](#);
 - (b) if the CMA considers that there has been a material change of circumstances since the undertaking was accepted;
 - (c) if the CMA has reasonable grounds for suspecting that a person from whom the undertaking was accepted has failed to adhere to one or more of the terms of the undertaking;
 - (d) if the CMA has reasonable grounds for suspecting that information which led it to accept the undertaking was incomplete, false or misleading in a material way.

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- (4) If the CMA gives a final infringement notice or an online interface notice by virtue of [subsection \(3\)\(b\), \(c\) or \(d\)](#), the undertaking is to be treated as released as from the date on which the notice is given.

Commencement Information

I2 S. 186 not in force at Royal Assent, see [s. 339\(1\)](#)

187 Undertakings under [section 185](#): procedural requirements

- (1) [This section](#) applies where the CMA proposes to—
- accept a material variation of an undertaking under [section 185](#), or
 - release a person from any such undertaking,
- and the proposed variation or release has not been requested by the person who gave the undertaking.
- (2) Before taking the proposed action mentioned in [subsection \(1\)](#) the CMA must—
- give notice to the person under [subsection \(3\)](#), and
 - consider any representations made in accordance with the notice.
- (3) A notice under [this subsection](#) must state—
- the fact that the CMA is proposing to act as mentioned in [subsection \(1\)](#),
 - the reasons for doing so, and
 - the means by which, and the time by which, representations may be made in relation to the proposed action.
- (4) If after considering any representations made in accordance with a notice under [subsection \(3\)](#) the CMA decides to take an action mentioned in [subsection \(1\)](#), the CMA must give notice to the person of that decision.
- (5) The reference in [subsection \(1\)\(a\)](#) to a material variation is a reference to any variation that the CMA considers to be material in any respect.

Commencement Information

I3 S. 187 not in force at Royal Assent, see [s. 339\(1\)](#)

188 Provisional breach of undertakings enforcement notice

- (1) [This section](#) applies where—
- the CMA has accepted an undertaking from a person (“the respondent”) under [section 185](#), and
 - the CMA has reasonable grounds to believe that the respondent has failed to comply with one or more of the terms of the undertaking.
- (2) The CMA may give to the respondent a notice under [this section](#) (a “provisional breach of undertakings enforcement notice”).
- (3) A provisional breach of undertakings enforcement notice must—

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- (a) set out the grounds on which it is given, including the respondent’s alleged acts or omissions giving rise to the belief mentioned in [subsection \(1\)\(b\)](#);
 - (b) set out proposed directions for the purpose of securing that the respondent complies with [subsection \(5\)](#);
 - (c) invite the respondent to make representations to the CMA about the giving of the notice;
 - (d) specify the means by which, and the time by which, such representations must be made.
- (4) The means specified under [subsection \(3\)\(d\)](#) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way.
- (5) The respondent complies with [this subsection](#) by—
- (a) in the case of a respondent within [section 185\(2\)\(a\)](#), not continuing or repeating the infringing practice (where it is believed that the respondent has engaged or is engaging in that practice);
 - (b) in the case of a respondent within [section 185\(2\)\(b\)](#), not consenting to or conniving in the infringing practice;
 - (c) in either case, not engaging in the infringing practice in the course of the respondent’s business or another business;
 - (d) in either case, not consenting to or conniving in the carrying out of the infringing practice by a body corporate with which the respondent has a special relationship (see [section 220](#)).
- (6) If the CMA is considering the imposition of a monetary penalty on the respondent (see [section 189\(3\)\(b\)](#)), the provisional breach of undertakings enforcement notice must also state—
- (a) that the CMA is considering imposing a monetary penalty;
 - (b) the proposed amount of the penalty (including whether the penalty would be a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate);
 - (c) any further factors (in addition to those provided under [subsection \(3\)\(a\)](#)) which the CMA considers justify the imposition of the proposed penalty and its amount or amounts.

Commencement Information

I4 S. 188 not in force at Royal Assent, see [s. 339\(1\)](#)

189 Final breach of undertakings enforcement notice

- (1) [This section](#) applies where—
- (a) the CMA has given to the respondent a provisional breach of undertakings enforcement notice under [section 188](#),
 - (b) the time for the respondent to make representations to the CMA in accordance with that notice has expired, and
 - (c) after considering such representations (if any), the CMA is satisfied that the respondent has failed to comply with one or more of the terms of the undertaking.

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- (2) The CMA may give to the respondent a notice under [this section](#) (a “final breach of undertakings enforcement notice”).
- (3) A final breach of undertakings enforcement notice may, subject to [subsection \(4\)](#), impose on the respondent a requirement to do either or both of the following—
 - (a) to comply with such directions as the CMA considers appropriate for the purpose of securing that the respondent complies with [section 188\(5\)](#);
 - (b) to pay a monetary penalty in respect of the failure mentioned in [subsection \(1\)\(c\)](#).
- (4) A requirement under [subsection \(3\)\(b\)](#) to pay a monetary penalty may be imposed only if the CMA is satisfied that the failure in question is without reasonable excuse.
- (5) A final breach of undertakings enforcement notice must—
 - (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the failure mentioned in [subsection \(1\)\(c\)](#);
 - (b) state any further factors (in addition to those provided under [paragraph \(a\)](#)) which the CMA considers justify the giving of the notice;
 - (c) if directions are given under [subsection \(3\)\(a\)](#), specify the actions to be taken by the respondent in accordance with the directions;
 - (d) if a penalty is imposed under [subsection \(3\)\(b\)](#), specify the monetary penalty information (see [section 203](#));
 - (e) state that the respondent has a right to appeal against the notice and the main details of that right (so far as not stated in accordance with [paragraph \(d\)](#)).
- (6) The CMA may publish a final breach of undertakings enforcement notice in such manner, and to such extent, as the CMA considers appropriate.

Commencement Information

I5 S. 189 not in force at Royal Assent, see [s. 339\(1\)](#)

190 Monetary penalties under [section 189](#): amount

- (1) [This section](#) applies in relation to a requirement imposed on the respondent to pay a monetary penalty under a final breach of undertakings enforcement notice.
- (2) The amount of the penalty 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 penalty must not exceed—
 - (a) in the case of a fixed amount, £150,000 or, if higher, 5% of the total value of the turnover (if any) of the respondent;
 - (b) in the case of an amount calculated by reference to a daily rate, for each day £15,000 or, if higher, 5% of the total value of the daily turnover (if any) of the respondent;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.

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- (4) In imposing a penalty by reference to a daily rate—
- (a) no account is to be taken of any days before the date on which the provisional breach of undertakings enforcement notice was given to the respondent, and
 - (b) unless the CMA determines an earlier date, the amount payable ceases to accumulate on the day on which the requirements of the final breach of undertakings enforcement notice are complied with.

Commencement Information

16 S. 190 not in force at Royal Assent, see [s. 339\(1\)](#)

Status:

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Changes to legislation:

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