
Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 11. (See end of Document for details)

SCHEDULES

SCHEDULE 11

Section 143(2)

CIVIL PENALTIES ETC IN CONNECTION WITH BREACHES OF REMEDIES

PART 1

COMMITMENTS AND DIRECTIONS UNDER PART 1 OF CA 1998 (COMPETITION)

PROSPECTIVE

- 1 In Part 1 of CA 1998 (competition), Chapter 3 (investigation and enforcement) is amended as follows.

Commencement Information

- I1** Sch. 11 para. 1 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 2 In section 31A (commitments), after subsection (2) insert—
“(2A) But the CMA may not accept commitments from a person unless it has provided the person with information about the possible consequences of failing to adhere to the commitments.”

Commencement Information

- I2** Sch. 11 para. 2 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 3 In section 31E (enforcement of commitments), after subsection (3) insert—
“(4) In deciding whether and, if so, how to proceed under this section, the CMA must have regard to the statement of policy which was most recently published by it under [section 35C](#) at the time of the failure to adhere to the commitments.”

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Commencement Information

I3 Sch. 11 para. 3 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

4 In the italic heading before section 32, at the end insert “: directions and interim measures”.

Commencement Information

I4 Sch. 11 para. 4 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

5 In section 34 (enforcement of directions), after subsection (3) insert—
 “(4) In deciding whether and, if so, how to proceed under this section, the CMA must have regard to the statement of policy which was most recently published by it under [section 35C](#) at the time of the failure to comply with the direction.”

Commencement Information

I5 Sch. 11 para. 5 not in force at Royal Assent, see [s. 339\(1\)](#)

6 After section 35 insert—

“Civil sanctions: breaches of commitments, directions and interim measures

35A Enforcement of powers under sections 31A, 32, 33 and 35: imposition of penalties

- (1) The CMA may, in accordance with [section 35B](#), impose a penalty on a person—
 - (a) from whom the CMA has accepted commitments under section 31A (and who has not been released from those commitments), or
 - (b) to whom the CMA has given a direction under section 32, 33 or 35, where the CMA considers that the person has, without reasonable excuse, failed to adhere to the commitments or comply with the direction.
- (2) In deciding whether and, if so, how to proceed under [subsection \(1\)](#) the CMA must have regard to the statement of policy which was most recently published under [section 35C](#) at the time of the failure to adhere or comply.

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Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 11. (See end of Document for details)

35B Penalties under section 35A: amount

- (1) A penalty under [section 35A\(1\)](#) is to be such amount as the CMA considers appropriate.
- (2) The amount 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) A penalty imposed under [section 35A\(1\)](#) on a person who is not an undertaking must not—
 - (a) in the case of a fixed amount, exceed £30,000;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
- (4) A penalty imposed under [section 35A\(1\)](#) on a person who is an undertaking must not—
 - (a) in the case of a fixed amount, exceed 5% of the total value of the turnover of the undertaking;
 - (b) in the case of an amount calculated by reference to a daily rate, for each day exceed 5% of the total value of the daily turnover of the undertaking;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
- (5) 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 the Enterprise Act 2002 (as applied by [subsection \(6\)](#)), and
 - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the person adheres to the commitments or complies with the direction (as the case may be) referred to in [section 35A\(1\)](#).
- (6) Sections 112 to 115 of the Enterprise Act 2002 apply in relation to a penalty imposed under [section 35A\(1\)](#) as they apply in relation to a penalty imposed under [section 110\(1\)](#) or [\(1A\)](#) of that Act, with the following modifications—
 - (a) any reference in those provisions to the appropriate authority is to be read as a reference to the CMA only;
 - (b) [section 114\(5A\)](#) 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\(12\)](#) is to be read as if, for paragraph (b), there were substituted—
 - “(b) “relevant guidance” means the statement of policy which was most recently published

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under [section 35C](#) at the time when the act or omission concerned occurred.”

- (7) The Secretary of State may by regulations amend subsection (3)(a) and (b) by substituting for either or both of the sums for the time being specified in those paragraphs such other sum or sums as the Secretary of State considers appropriate.
- (8) Before making regulations under [subsection \(7\)](#) the Secretary of State must consult—
 - (a) the CMA, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (9) The Secretary of State may by regulations make provision for determining the turnover and daily turnover of an undertaking for the purposes of [subsection \(4\)](#).
- (10) Regulations under [subsection \(9\)](#) may, in particular, make provision as to—
 - (a) the amounts which are, or which are not, to be treated as comprising an undertaking’s turnover or daily turnover;
 - (b) the date, or dates, by reference to which an undertaking’s turnover, or daily turnover, is to be determined.
- (11) Regulations under [subsection \(9\)](#) may, in particular, make provision enabling the CMA to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of [subsection \(10\)](#)).

Statement of policy in relation to functions under sections 31E, 34 and 35A

35C Statement of policy in relation to functions under sections 31E, 34 and 35A

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of functions under sections 31E, 34 and [35A](#).
- (2) The statement must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under [section 35A\(1\)](#).
- (3) The CMA may revise its statement of policy and, where it does so, it must publish the revised statement.
- (4) The CMA must consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
- (5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (6) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.

Civil sanctions: infringements of the Chapter I or II prohibitions”

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Commencement Information

I6 Sch. 11 para. 6 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PART 2

UNDERTAKINGS AND ORDERS UNDER PART 3 OF EA 2002 (MERGERS)

PROSPECTIVE

7 In Part 3 of EA 2002 (mergers), Chapter 4 (enforcement) is amended as follows.

Commencement Information

I7 Sch. 11 para. 7 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 8 (1) Section 34C (functions to be exercised by CMA groups) is amended as follows.
- (2) In subsection (1)(e), for “94A” substitute “94AA”.
- (3) In subsection (3)(e), for “and 94” substitute “, 94 and 94AA”.

Commencement Information

I8 Sch. 11 para. 8 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 9 (1) Section 89 (subject-matter of undertakings) is amended as follows.
- (2) In the heading, at the start insert “Acceptance and”.
- (3) Before subsection (1) insert—
- “(A1) An appropriate authority may not accept an enforcement undertaking from a person unless it has provided the person with information about the possible consequences of failing to comply with the undertaking.”
- (4) After subsection (2) insert—
- “(3) In this section, “appropriate authority” has the same meaning as in [section 94AA](#).”

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Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 11. (See end of Document for details)

Commencement Information

I9 Sch. 11 para. 9 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

10 In section 94 (rights to enforce undertakings and orders), after subsection (9) insert—

“(10) In deciding whether and, if so, how to proceed under this section, the CMA must have regard to the statement of policy which was most recently published by it under section 94B at the time of the failure to comply with the undertaking or (as the case may be) order.”

Commencement Information

I10 Sch. 11 para. 10 not in force at Royal Assent, see [s. 339\(1\)](#)

11 For section 94A substitute—

“94AA Enforcement of undertakings and orders: imposition of penalties

- (1) The appropriate authority may, in accordance with [section 94AB](#), impose a penalty on a person—
 - (a) from whom the authority has accepted an enforcement undertaking, or
 - (b) to whom an enforcement order is addressed,
 where the authority considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.
- (2) In this section and in [section 94AB](#), “the appropriate authority” means—
 - (a) in relation to an enforcement undertaking or enforcement order made by the Secretary of State under Schedule 7, the Secretary of State;
 - (b) in relation to any other enforcement undertaking or enforcement order, the CMA.
- (3) In deciding whether and, if so, how to proceed under [subsection \(1\)](#) the CMA must have regard to the statement of policy which was most recently published under section 94B at the time of the failure to comply.

94AB Penalties under [section 94AA](#): amount

- (1) A penalty under [section 94AA\(1\)](#) is to be such amount as the appropriate authority considers appropriate.
- (2) The amount must be—
 - (a) a fixed amount,
 - (b) an amount calculated by reference to a daily rate, or

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- (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) A penalty imposed under [section 94AA\(1\)](#) on a person who does not own or control an enterprise must not—
- (a) in the case of a fixed amount, exceed £30,000;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
- (4) A penalty imposed under [section 94AA\(1\)](#) on any other person must not—
- (a) in the case of a fixed amount, exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
 - (b) in the case of an amount calculated by reference to a daily rate, for each day exceed 5% of the total value of the daily turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
- (5) 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\(A1\)](#) (as applied by [subsection \(6\)](#)), and
 - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the person complies with the enforcement undertaking or enforcement order.
- (6) Sections 112 to 115 apply in relation to a penalty imposed under [section 94AA\(1\)](#) as they apply in relation to a penalty imposed under [section 110\(1\)](#) or [\(1A\)](#), with the following modifications—
- (a) any reference in those provisions to the appropriate authority is to be read as a reference to the appropriate authority within the meaning of this section (see [section 94AA\(2\)](#));
 - (b) [section 114\(5A\)](#) is to be read as if the words “or OFCOM” were omitted;
 - (c) [section 114\(12\)](#) is to be read as if, for paragraph (b), there were substituted—
 - “(b) “relevant guidance” means the statement of policy which was most recently published under [section 94B](#) at the time when the act or omission concerned occurred.”
- (7) The Secretary of State may by regulations amend [subsection \(3\)\(a\)](#) and [\(b\)](#) by substituting for either or both of the sums for the time being specified in those paragraphs such other sum or sums as the Secretary of State considers appropriate.
- (8) Before making regulations under [subsection \(7\)](#) the Secretary of State must consult—

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- (a) the CMA, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (9) The Secretary of State may by regulations make provision for determining, for the purposes of this section—
- (a) when an enterprise is to be treated as being controlled by a person;
 - (b) the turnover and daily turnover (both in and outside the United Kingdom) of an enterprise.
- (10) Regulations under [subsection \(9\)\(b\)](#) may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising an enterprise’s turnover or daily turnover;
 - (b) the date, or dates, by reference to which an enterprise’s turnover, or daily turnover, is to be determined.
- (11) Regulations under [subsection \(9\)](#) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of [subsection \(10\)](#)).

Commencement Information

I11 Sch. 11 para. 11 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

- 12 (1) Section 94B (statement of policy in relation to powers under sections 94 and 94A) is amended as follows.
- (2) In the heading—
- (a) for “powers” substitute “functions”.
 - (b) for “94A” substitute “94AA”.
- (3) In subsection (1)—
- (a) in the words before paragraph (a), for “use of its powers” substitute “exercise of functions”;
 - (b) in paragraph (a) omit “, insofar as they relate to interim measures”;
 - (c) in paragraph (b), for “94A” substitute “94AA”.
- (4) In subsection (2), for “94A” substitute “94AA”.
- (5) Omit subsection (6).

Commencement Information

I12 Sch. 11 para. 12 not in force at Royal Assent, see [s. 339\(1\)](#)

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PROSPECTIVE

- 13 In section 120 (review of decisions under Part 3), in subsection (2), in paragraph (a), for “94A(1)” substitute “94AA(1)”.

Commencement Information

I13 Sch. 11 para. 13 not in force at Royal Assent, see [s. 339\(1\)](#)

PART 3

UNDERTAKINGS AND ORDERS UNDER PART 4 OF EA
2002 (MARKET STUDIES AND MARKET INVESTIGATIONS)

PROSPECTIVE

- 14 In Part 4 of EA 2002 (market studies and market investigations), Chapter 3 (enforcement) is amended as follows.

Commencement Information

I14 Sch. 11 para. 14 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 15 (1) Section 133A (functions to be exercised by CMA groups) is amended as follows.
(2) In subsection (1)(i), for “section 167” substitute “sections 167 and [167A](#)”.
(3) In subsection (2)(e), for “section 167” substitute “sections 167 and [167A](#)”.

Commencement Information

I15 Sch. 11 para. 15 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 16 After section 161 insert—

“161A Acceptance of enforcement undertakings: Part 4

- (1) The relevant authority may not accept an enforcement undertaking from a person unless it has provided the person with information about the possible consequences of failing to comply with the undertaking.
(2) In [subsection \(1\)](#), “the relevant authority” means—

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- (a) in the case of a restricted PI reference or a full PI reference, the Secretary of State;
- (b) in any other case, the CMA.”

Commencement Information

I16 Sch. 11 para. 16 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

17 In section 167 (rights to enforce undertakings and orders under this Part), after subsection (9) insert—

“(10) In deciding whether and, if so, how to proceed under this section, the CMA must have regard to the statement of policy which was most recently published by it under [section 167C](#) at the time of the failure to comply with the undertaking or (as the case may be) order.”

Commencement Information

I17 Sch. 11 para. 17 not in force at Royal Assent, see [s. 339\(1\)](#)

18 After section 167 insert—

“167A Enforcement of undertakings and orders: imposition of penalties

- (1) The relevant authority may, in accordance with [section 167B](#), impose a penalty on a person—
 - (a) from whom the authority has accepted an enforcement undertaking, or
 - (b) to whom an enforcement order is addressed,
 where the authority considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.
- (2) In this section and in [section 167B](#), “the relevant authority” means—
 - (a) in the case of a restricted PI reference or a full PI reference, the Secretary of State;
 - (b) in any other case, the CMA.
- (3) In deciding whether and, if so, how to proceed under [subsection \(1\)](#) the CMA must have regard to the statement of policy which was most recently published under [section 167C](#) at the time of the failure to comply.

167B Penalties under [section 167A](#): amount

- (1) A penalty under [section 167A\(1\)](#) is to be such amount as the relevant authority considers appropriate.
- (2) The amount must be—
 - (a) a fixed amount,

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- (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) A penalty imposed under [section 167A\(1\)](#) on a person who does not own or control an enterprise must not—
 - (a) in the case of a fixed amount, exceed £30,000;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
- (4) A penalty imposed under [section 167A\(1\)](#) on any other person must not—
 - (a) in the case of a fixed amount, exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
 - (b) in the case of an amount calculated by reference to a daily rate, for each day exceed 5% of the total value of the daily turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day.
- (5) 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\(A1\)](#) (as applied by [subsection \(6\)](#)), and
 - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the person complies with the enforcement undertaking or enforcement order.
- (6) Sections 112 to 115 apply in relation to a penalty imposed under [section 167A\(1\)](#) as they apply in relation to a penalty imposed under [section 110\(1\)](#) or [\(1A\)](#), with the following modifications—
 - (a) any reference in those provisions to the appropriate authority is to be read as a reference to the relevant authority within the meaning of this section (see [section 167A\(2\)](#));
 - (b) [section 114\(5A\)](#) is to be read as if the words “or OFCOM” were omitted;
 - (c) [section 114\(12\)](#) is to be read as if, for paragraph (b), there were substituted—
 - “(b) “relevant guidance” means the statement of policy which was most recently published under [section 167C](#) at the time when the act or omission concerned occurred.”
- (7) The Secretary of State may by regulations amend [subsection \(3\)\(a\)](#) and [\(b\)](#) by substituting for either or both of the sums for the time being specified in those paragraphs such other sum or sums as the Secretary of State considers appropriate.

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- (8) Before making regulations under [subsection \(7\)](#) the Secretary of State must consult—
 - (a) the CMA, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (9) The Secretary of State may by regulations make provision for determining, for the purposes of this section—
 - (a) when an enterprise is to be treated as being controlled by a person;
 - (b) the turnover and daily turnover (both in and outside the United Kingdom) of an enterprise.
- (10) Regulations under [subsection \(9\)\(b\)](#) may, in particular, make provision as to—
 - (a) the amounts which are, or which are not, to be treated as comprising an enterprise’s turnover or daily turnover;
 - (b) the date, or dates, by reference to which an enterprise’s turnover, or daily turnover, is to be determined.
- (11) Regulations under [subsection \(9\)](#) may, in particular, make provision enabling the relevant authority to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of [subsection \(10\)](#)).

167C Statement of policy in relation to functions under sections 167 and 167A

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of functions under sections 167 and [167A](#).
- (2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under [section 167A](#).
- (3) The CMA may revise its statement of policy and, where it does so, it must publish the revised statement.
- (4) The CMA must consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
- (5) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.”

Commencement Information

I18 Sch. 11 para. 18 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

19 In section 179 (review of decisions under Part 4), in subsection (2), in paragraph (a), after “section” insert “[167A\(1\)](#) or”.

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Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 11. (See end of Document for details)

Commencement Information

I19 Sch. 11 para. 19 not in force at Royal Assent, see [s. 339\(1\)](#)

Status:

This version of this schedule contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 11.