
STATUTORY INSTRUMENTS

2020 No. 1343

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

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)(1), 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—

(1) 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).

- (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;
- “Regulation 1/2003” means Council Regulation (EC) No 1/2003(2) 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.

(2) O.J. L 1, 4.1.2003, p. 1.

(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.

(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)(3), 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).”.