



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER III

INVESTIGATION AND ENFORCEMENT

[^{F1}Civil sanctions

Textual Amendments

- F1** Ss. 40A, 40B and cross-heading inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 40\(2\)](#), 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

40A Penalties: failure to comply with requirements

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 26, 26A, 27, 28 or 28A, it may impose a penalty of such amount as it considers appropriate.
- (2) The amount may 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 subsection (1) must not—
 - (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;

Status: Point in time view as at 01/11/2016.

Changes to legislation: Competition Act 1998, Cross Heading: Civil sanctions is up to date with all changes known to be in force on or before 03 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify;
 - (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 as the Secretary of State may so specify.
- (4) The fixed amount specified for the purposes of subsection (3)(a) or (c) may not exceed £30,000.
- (5) The amount per day specified for the purposes of subsection (3)(b) or (c) may not exceed £15,000.
- (6) In imposing a penalty by reference to a daily rate—
- (a) no account is to be taken of any days before the service of the notice under section 112 of the Enterprise Act 2002 (as applied by subsection (9)) on the person concerned, 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 earliest of the days mentioned in subsection (7).
- (7) The days are—
- (a) the day on which the requirement concerned is satisfied;
 - (b) the day on which the CMA makes a decision (within the meaning given by section 31(2)) or terminates the investigation in question without making such a decision;
 - (c) if the Secretary of State has made an order under section 31F(1)(b) imposing a time-limit on the making of such a decision, the latest day on which such a decision may be made as a result of the investigation in question.
- (8) Before making an order under subsection (3), the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.
- (9) Sections 112 to 115 of the Enterprise Act 2002 (supplementary provisions about penalties) apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty imposed under section 110(1) of that Act.

40B Statement of policy on penalties

- (1) The CMA must prepare and publish a statement of policy in relation to the use of its powers under section 40A.
- (2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 40A.
- (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 such 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.

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- (6) In deciding whether and, if so, how to proceed under section 40A, the CMA must have regard to the statement of policy which was most recently published under this section at the time when the failure concerned occurred.]

41 Agreements notified to the Commission.

- [^{F2}(1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.
- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the [^{F3}OFT] from investigating it under this Part.
- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.]

Textual Amendments

- F2** S. 41 ceased to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 26** (with reg. 6(2))
- F3** Word in s. 41 substituted (1.4.2003) by [Enterprise Act 2002](#) (c. 40), s. 279, **Sch. 25 para. 38(33)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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