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SCHEDULES

SCHEDULE 3

Sections 3(1)(c) and 19(1)(b).

GENERAL EXCLUSIONS

Planning obligations

- 1 (1) The Chapter I prohibition does not apply to an agreement—
- (a) to the extent to which it is a planning obligation;
 - (b) which is made under section 75 (agreements regulating development or use of land) or 246 (agreements relating to Crown land) of the ^{M1}Town and Country Planning (Scotland) Act 1997; or
 - (c) which is made under [^{F1}Article 40 of the ^{M2}Planning (Northern Ireland) Order 1991][^{F1}section 76 of the Planning Act (Northern Ireland) 2011] .
- (2) In sub-paragraph (1)(a), “planning obligation” means—
- (a) a planning obligation for the purposes of section 106 of the ^{M3}Town and Country Planning Act 1990; or
 - (b) a planning obligation for the purposes of section 299A of that Act.

Textual Amendments

- F1** Words in Sch. 3 para. 1(1)(c) substituted (N.I.) (13.2.2015 for specified purposes, 1.4.2015 so far as not already in force) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\)](#), [Sch. 6 para. 89](#) (with [s. 211](#)); [S.R. 2015/49, arts. 2, 3, Sch. 1](#) (with [Sch. 2](#))

Marginal Citations

- M1** [1997 c. 8.](#)
M2 [S.I. 1991/1220 \(N.I. 11\).](#)
M3 [1990 c. 8.](#)

Section 21(2) agreements

- 2 [^{F2}(1) The Chapter I prohibition does not apply to an agreement in respect of which a direction under section 21(2) of the ^{M4}Restrictive Trade Practices Act 1976 is in force immediately before the coming into force of section 2 (“a section 21(2) agreement”).
- (2) If a material variation is made to a section 21(2) agreement, sub-paragraph (1) ceases to apply to the agreement on the coming into force of the variation.
- (3) Sub-paragraph (1) does not apply to a particular section 21(2) agreement if the [^{F3}OFT] gives a direction under this paragraph to that effect.

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- (4) If the [F3OFT] is considering whether to give a direction under this paragraph, [F4it] may by notice in writing require any party to the agreement in question to give [F4the OFT] such information in connection with the agreement as [F4it] may require.
- (5) The [F3OFT] may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the [F3OFT] may give a direction under this paragraph.
- (7) The [F3OFT] may also give a direction under this paragraph [F5if it] considers—
- (a) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
 - (b) that [F5the OFT is]not likely to grant it an unconditional individual exemption.
- (8) For the purposes of sub-paragraph (7) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (9) A direction under this paragraph—
- (a) must be in writing;
 - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).]

Textual Amendments

- F2** Sch. 3 para. 2 ceases to have effect (1.5.2007) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004](#) (S.I. 2004/1261), reg. 1(b), **Sch. 1 para. 50(a)** (with reg. 6(2))
- F3** Word in Sch. 3 para. 2 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(51)(a)(i)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F4** Words in Sch. 3 para. 2(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(51)(a)(ii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F5** Words in Sch. 3 para. 2(7) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(51)(a)(iii)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

Marginal Citations

- M4** 1976 c. 34.

F6 ...

Textual Amendments

- F6** Sch. 3 para. 3 and crossheading omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/93), regs. 1(1), **29(2)**; 2020 c. 1, Sch. 5 para. 1(1)

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Services of general economic interest etc.

- 4 Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

Compliance with legal requirements

- 5 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.
- (2) The Chapter II prohibition does not apply to conduct to the extent to which it is engaged in an order to comply with a legal requirement.
- (3) In this paragraph “legal requirement” means a requirement—
- (a) imposed by or under any enactment in force in the United Kingdom;
 - [^{F7}(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)).]
 - ^{F8}(c)

Textual Amendments

- F7** Sch. 3 para. 5(3)(b) substituted (31.12.2020) by S.I. 2019/93, reg. 29(3)(a) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), 6)
- F8** Sch. 3 para. 5(3)(c) omitted (31.12.2020) by virtue of S.I. 2019/93, reg. 29(3)(b) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), 6)

Avoidance of conflict with international obligations

- 6 (1) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter I prohibition not to apply to—
- (a) a particular agreement, or
 - (b) any agreement of a particular description,
- he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter II prohibition not to apply in particular

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circumstances, he may by order provide for it not to apply in such circumstances as may be specified.

- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.
- (6) An international arrangement relating to civil aviation and designated by an order made by the Secretary of State is to be treated as an international obligation for the purposes of this paragraph.
- (7) In this paragraph and paragraph 7 “specified” means specified in the order.

Public policy

- 7 (1) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition ought not to apply to—
 - (a) a particular agreement, or
 - (b) any agreement of a particular description,
 he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter II prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.

Coal and steel

- 8 (1) The Chapter I prohibition does not apply to an agreement which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (2) Sub-paragraph (1) ceases to have effect on the date on which the ECSC Treaty expires (“the expiry date”).
- (3) The Chapter II prohibition does not apply to conduct which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (4) Sub-paragraph (3) ceases to have effect on the expiry date.
- (5) In this paragraph—

“coal or steel product” means any product of a kind listed in Annex I to the ECSC Treaty; and

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“ECSC Treaty” means the Treaty establishing the European Coal and Steel Community.

Agricultural products

- 9 (1) [^{F9}The Chapter 1 prohibition does not apply to an agreement to the extent that it is an agreement between the members of—
- (a) a recognised producer organisation (“PO”), or
 - (b) a recognised association of producer organisations (“APO”),
- for the PO or APO (as the case may be) to carry out one or more of the activities mentioned in sub-paragraph (1A) on behalf of its members (for all or part of their total production), provided that Conditions A and B are also met.]
- [^{F9}(1A) The activities are—
- (a) planning production;
 - (b) optimising production costs;
 - (c) concentrating supply;
 - (d) placing products on the market;
 - (e) negotiating supply contracts.]

[^{F9}(1B) Condition A is that—

 - (a) in the case of a PO, the PO concentrates supply and places the products of its members on the market, whether or not there is a transfer of ownership of agricultural products by the producers to the PO, or
 - (b) in the case of an APO, the APO concentrates supply and places the products of the members of the POs it represents on the market, whether or not there is a transfer of ownership of agricultural products by the producers to the APO or to any of the POs the APO represents.]

[^{F9}(1C) Condition B is that—

 - (a) in the case of a PO, none of the producers concerned are members of any other PO as regards the products covered by the activities mentioned in sub-paragraph (1A) to which the agreement relates, or
 - (b) in the case of an APO, none of the producers concerned are members of a PO that is a member of any other APO as regards the products covered by the activities mentioned in sub-paragraph (1A) to which the agreement relates.]

[^{F9}(1D) But the Secretary of State may decide that the RPO exclusion applies if Condition B is not met, if—

 - (a) every producer which is a member of more than one PO holds distinct production units located in different geographical areas, and
 - (b) the Secretary of State considers that it is appropriate in all the circumstances for the RPO exclusion to apply.]

[^{F9}(1E) If the Secretary of State is considering whether to make a decision under sub-paragraph (1D), the Secretary of State may by notice in writing require any party to the agreement in question to give the Secretary of State such information in connection with the agreement as the Secretary of State may require.]

(2) [^{F11}If the Commission determines that an agreement does not fulfil the conditions specified by the provision for agricultural products for exclusion from [^{F12}Article

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101(1)], the exclusion provided by this paragraph (“the agriculture exclusion”) is to be treated as ceasing to apply to the agreement on the date of the decision.]

- (3) The [F13agriculture exclusion][F13RPO exclusion] does not apply to a particular agreement if the [F14CMA] gives a direction under this paragraph to that effect.
- (4) If the [F14CMA] is considering whether to give a direction under this paragraph, [F15it] may by notice in writing require any party to the agreement in question to give the [F14CMA] such information in connection with the agreement as [F15it] may require.
- (5) The [F14CMA] may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the [F14CMA] may give a direction under this paragraph.
- (7) The [F14CMA] may also give a direction under this paragraph if [F16it] considers that an agreement (whether or not [F16it] considers that it infringes the Chapter I prohibition) is likely, or is intended, substantially and unjustifiably to prevent, restrict or distort competition in relation to an agricultural product.
- (8) A direction under this paragraph—
 - (a) must be in writing;
 - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).
- (9) [F17In this paragraph—
 - “agricultural product” means a product that falls within a sector mentioned in Schedule 1 to the Agriculture Act 2020;
 - “recognised association of producer organisations” means an association recognised under section 30 of that Act;
 - “recognised producer organisation” means a producer organisation recognised under section 30 of that Act.]

Textual Amendments

- F9** Sch. 3 para. 9(1)-(1E) substituted for Sch. 3 para. 9(1) (11.11.2020 for specified purposes) by Agriculture Act 2020 (c. 21), s. 57(1)(b)(c)(2)(b), **Sch. 2 para. 2(2)**
- F10** Words in Sch. 3 para. 9(1)(b) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F11** Sch. 3 para. 9(2) omitted (11.11.2020 for specified purposes) by virtue of Agriculture Act 2020 (c. 21), s. 57(1)(b)(c)(2)(b), **Sch. 2 para. 2(3)**
- F12** Words in Sch. 3 para. 9(2) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F13** Words in Sch. 3 para. 9(3) substituted (11.11.2020 for specified purposes) by Agriculture Act 2020 (c. 21), s. 57(1)(b)(c)(2)(b), **Sch. 2 para. 2(4)**
- F14** Word in Sch. 3 para. 9(3)-(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 55(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15** Words in Sch. 3 para. 9(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(51)(b)(ii)**; 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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- F16** Words in Sch. 3 para. 9(7) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(b\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\) \(as amended \(20.7.2007\) by S.I. 2007/1846, reg. 3\(2\), Sch.\)](#)
- F17** [Sch. 3 para. 9\(9\)](#) substituted (11.11.2020 for specified purposes) by [Agriculture Act 2020 \(c. 21\), s. 57\(1\)\(b\)\(c\)\(2\)\(b\), Sch. 2 para. 2\(5\)](#)
- F18** Words in Sch. 3 para. 9(9) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\), reg. 1\(a\), Sch. 1 para. 50\(b\)\(iii\)](#)

Modifications etc. (not altering text)

- C1** [Sch. 3 para. 9](#) applied (31.12.2020) by [Regulation \(EC\) No. 1379/2013, Art. 41\(4\) \(as inserted by The Common Fisheries Policy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/739\), regs. 1, 19\(31\)\(d\); 2020 c. 1, Sch. 5 para. 1\(1\)\)](#)

[^{F19}10 (1) The Chapter 1 prohibition does not apply to an agreement to the extent that it is an agreement between the members of a recognised interbranch organisation that has the object of carrying out one or more specified activities, provided that the condition in sub-paragraph (2) is also met.

This exclusion is referred to in this paragraph as the “RIBO exclusion”.

- (2) The condition in this sub-paragraph is that the organisation has notified the agreement to the CMA and provided all further details required by the CMA, and—
- (a) the CMA has decided that it is appropriate for the RIBO exclusion to apply, or
 - (b) within two months of the CMA receiving all the details it requires, the CMA has not decided that it is inappropriate for the RIBO exclusion to apply.
- (3) In deciding whether it is appropriate for the RIBO exclusion to apply, the CMA must consider whether the benefit of the agreement to the specified activities of the recognised interbranch organisation outweighs any prevention, restriction or distortion of competition within the United Kingdom as a result of the agreement.
- (4) The CMA may at any time give a direction to the effect that the RIBO exclusion no longer applies to a particular agreement.
- (5) Sub-paragraphs (4) to (8) of paragraph 9 apply to a direction under this paragraph as they apply to a direction under paragraph 9.
- (6) In this paragraph—
- “recognised interbranch organisation” means an organisation of agricultural businesses recognised under section 30 of the Agriculture Act 2020;
- “specified activities” means the activities specified in regulations under section 30(6)(e) of that Act.]

Textual Amendments

- F19** [Sch. 3 para. 10](#) inserted (11.11.2020 for specified purposes) by [Agriculture Act 2020 \(c. 21\), s. 57\(1\)\(b\)\(c\)\(2\)\(b\), Sch. 2 para. 3](#)

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