



# Digital Markets, Competition and Consumers Act 2024

## 2024 CHAPTER 13

### PART 5

#### MISCELLANEOUS

#### CHAPTER 1

##### COMPETITION IN CONNECTION WITH MOTOR FUEL

### 311 Provision of information about competition in connection with motor fuel

- (1) The CMA may require an undertaking involved in, or connected with, the distribution, supply or retail of motor fuel (“U”) to give specified information to it where it considers that the information would assist the CMA in—
- (a) assessing competition in the United Kingdom in connection with the retail of motor fuel;
  - (b) publishing information about competition in the United Kingdom in connection with the retail of motor fuel;
  - (c) making proposals, or giving information or advice, to the Secretary of State about the need for, or the potential for, action to be taken (whether by the Secretary of State or another person) and what that action should be for the purposes of—
    - (i) increasing competition in the United Kingdom in connection with the retail of motor fuel;
    - (ii) benefiting consumers of motor fuel;
  - (d) assessing the effectiveness of any action taken as a result of proposals made, or information or advice given, under [paragraph \(c\)](#).
- (2) The power conferred by [subsection \(1\)](#) is to be exercised by giving U a notice (an “information notice”).

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*Status: Point in time view as at 24/05/2024. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)*

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- (3) The CMA must include in an information notice—
- (a) the time at which, or the frequency with which, the information must be given to the CMA;
  - (b) the manner and form in which the information must be given to the CMA;
  - (c) information about the possible consequences of not complying with the notice.
- (4) The power under this section to require U to give information to the CMA includes the power to—
- (a) require U to take copies of or extracts from information;
  - (b) require U to obtain or generate information;
  - (c) require U to collect or retain information that they would not otherwise collect or retain;
  - (d) if any specified information is not given to the CMA, require U to state, to the best of their knowledge and belief, both where that information is and why it has not been given to the CMA.
- (5) An undertaking may not be required under this section to give the CMA a privileged communication.
- (6) A “privileged communication” is a communication—
- (a) between a professional legal adviser and their client, or
  - (b) made in connection with, or in contemplation of, legal proceedings,
- which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (7) In the application of this section to Scotland—
- (a) the reference to the High Court is to be read as a reference to the Court of Session, and
  - (b) the reference to legal professional privilege is to be read as a reference to the confidentiality of communications.
- (8) In this section—
- “consumer” has the same meaning as in Part 4 of EA 2002 (see section 183(1) of that Act);
- “motor fuel” has the same meaning as in the Motor Fuel (Composition and Content) Regulations 1999 (S.I. 1999/3107) (see regulation 2 of those Regulations), but as if paragraphs (c) and (d) of the definition of that term were omitted;
- “specified” means—
- (a) specified, or described, in the information notice, or
  - (b) falling within a category which is specified, or described, in the information notice;
- “United Kingdom” includes a part of the United Kingdom.
- (9) The Secretary of State may by regulations amend the definition of “motor fuel” in [subsection \(8\)](#).
- (10) Regulations under [subsection \(9\)](#) are subject to the negative procedure.
- (11) In this Chapter, “undertaking” has the same meaning it has for the purposes of Part 1 of CA 1998 (competition: agreements, abuse of dominant position etc).

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*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)*

#### Commencement Information

- II** S. 311 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

### 312 Penalties for failure to comply with notices under [section 311](#)

- (1) The CMA may impose a penalty on an undertaking where it considers that the undertaking has, without reasonable excuse—
  - (a) failed to comply with an information notice under [section 311](#);
  - (b) destroyed, otherwise disposed of, falsified or concealed, or caused or permitted the destruction, disposal, falsification or concealment of, any document which the undertaking has been required to produce by an information notice under that section;
  - (c) given the CMA information which is false or misleading in a material particular in connection with an information notice under that section;
  - (d) given information which is false or misleading in a material particular to another undertaking knowing that the information was to be used for the purpose of giving information to the CMA in connection with an information notice under that section.
- (2) The amount of a penalty imposed on an undertaking under this section may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsection (4).
- (3) The amount of a penalty under this section 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.
- (4) The maximum amounts of a penalty that may be imposed on an undertaking are—
  - (a) in the case of a fixed amount, an amount equal to 1% of the total value of the undertaking's turnover (both inside and outside the United Kingdom);
  - (b) in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the undertaking's daily turnover (both inside and outside the United Kingdom);
  - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in [paragraph \(a\)](#), in relation to the fixed amount, and [paragraph \(b\)](#), in relation to the amount calculated by reference to a daily rate.
- (5) In imposing a penalty under this section by reference to a daily rate—
  - (a) no account is to be taken of any days before the service on the undertaking concerned of the provisional penalty notice under section 112(A1) of EA 2002 (as applied by [section 313](#)), and
  - (b) unless the CMA determines an earlier day (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the undertaking first complies with the requirement in question.

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- (6) The Secretary of State may by regulations make provision for determining the turnover (both inside and outside the United Kingdom) of an undertaking for the purposes of this section.
- (7) The regulations may, among other things—
- (a) make provision about amounts which are, or are not, to be included in an undertaking's turnover;
  - (b) make provision about the date or dates by reference to which an undertaking's turnover is to be determined;
  - (c) confer on the CMA the power to determine and make provision about matters specified in the regulations (including the matters mentioned in paragraphs (a) and (b)).
- (8) Regulations under [subsection \(6\)](#) are subject to the negative procedure.

#### Commencement Information

**I2** S. 312 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

### 313 Procedure and appeals

- (1) Sections 112 (penalties: main procedural requirements), 113 (payments and interest by instalments), section 114 (appeals) and 115 (recovery of penalties) of EA 2002 apply in relation to a penalty imposed under [section 312](#) as they apply in relation to a penalty imposed under section 110(1) of that Act.
- (2) For the purposes of this section—
- (a) sections 112 to 115 of EA 2002 are to be read as if references to “the appropriate authority” were references to the CMA only;
  - (b) section 114(5A) of EA 2002 is to be read as if the words “In the case of a penalty imposed on a by the CMA or OFCOM,” were omitted;
  - (c) section 114(12) of EA 2002 is to be read as if, for paragraph (b), there were substituted—
    - “(b) “the relevant guidance” means the statement of policy which was most recently published under [section 314](#) of the Digital Markets, Competition and Consumers Act 2024 at the time of the act or omission giving rise to the penalty.”

#### Commencement Information

**I3** S. 313 not in force at Royal Assent, see [s. 339\(1\)](#)

*Status: Point in time view as at 24/05/2024. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)*

PROSPECTIVE

### 314 Statement of policy on penalties

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of powers to impose a penalty under [section 312](#).
- (2) The statement must include a statement about the considerations relevant to the determination of—
  - (a) whether to impose a penalty under [section 312](#), and
  - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) In preparing or revising its statement of policy the CMA must consult—
  - (a) the Secretary of State, and
  - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under this section without the approval of the Secretary of State.
- (6) [Subsection \(7\)](#) applies where the CMA proposes to impose a penalty under [section 312](#) on an undertaking.
- (7) The CMA must have regard to the statement of policy most recently published under this section at the time of the act or omission giving rise to the penalty when deciding—
  - (a) whether to impose the penalty, and
  - (b) if so, the amount of the penalty.

#### Commencement Information

- I4** S. 314 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

### 315 Offences etc

#### *Destroying or falsifying information*

- (1) A person (“P”) commits an offence if, having been required to give information to the CMA under [section 311](#), P—
  - (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies or conceals it, or
  - (b) causes or permits its destruction, disposal, falsification or concealment.

#### *False or misleading information*

- (2) A person (“P”) commits an offence if—

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- (a) P gives information to the CMA in connection with an information notice under [section 311](#),
  - (b) the information is false or misleading in a material particular, and
  - (c) P knows that it is or is reckless as to whether it is.
- (3) A person (“P”) commits an offence if P gives information to another person which is false or misleading in a material particular and P—
- (a) either—
    - (i) knows the information to be false or misleading in a material particular, or
    - (ii) is reckless as to whether the information is false or misleading in a material particular, and
  - (b) knows that the information will be given to the CMA in connection with an information notice under that section.

#### *Sentences*

- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### *Offences by officers of a body corporate etc*

- (5) If an offence under this section committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to neglect on the part of an officer of the body corporate, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) If the affairs of a body corporate are managed by its members, [subsection \(5\)](#) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate.
- (7) If an offence under this section committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to neglect on the partner’s part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (8) In [subsection \(7\)](#), “partner” includes a person purporting to act as a partner.

#### **Commencement Information**

**I5** S. 315 not in force at Royal Assent, see [s. 339\(1\)](#)

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## PROSPECTIVE

**316 Penalties under section 312 and offences under section 315**

- (1) The CMA may not impose a penalty on a person under [section 312](#) in relation to an act or omission which constitutes an offence under [section 315](#) if the person has, in relation to that act or omission, been found guilty of that offence.
- (2) A person may not be found guilty of an offence under [section 315](#) by virtue of an act or omission if the person has paid a penalty imposed under [section 312](#) in relation to that act or omission.

**Commencement Information**

**I6** S. 316 not in force at Royal Assent, see [s. 339\(1\)](#)

## PROSPECTIVE

**317 Information sharing**

In Schedule 14 to EA 2002 (provisions about disclosure of information) at the appropriate place insert—

“Chapter 1 of [Part 5](#) of the Digital Markets, Competition and Consumer Act 2024.”

**Commencement Information**

**I7** S. 317 not in force at Royal Assent, see [s. 339\(1\)](#)

**318 Expiry of this Chapter**

- (1) This Chapter, apart from [subsection \(5\)](#) of this section and [section 317](#), expires at the end of the relevant period.
- (2) The “relevant period” means the period of five years beginning with the day on which this Act is passed.
- (3) The Secretary of State may by regulations amend this section to change the definition of the “relevant period”.
- (4) Regulations under [subsection \(3\)](#) are subject to the affirmative procedure.
- (5) The expiry of this Chapter does not affect its continued operation in relation to any information notice given under [section 311](#) before its expiry.

**Commencement Information**

**I8** S. 318 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

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PROSPECTIVE

## CHAPTER 2

### PROVISION OF INVESTIGATIVE ASSISTANCE TO OVERSEAS REGULATORS

#### 319 Provision of investigative assistance to overseas regulators

- (1) A relevant regulator (“R”) may assist an overseas regulator (“O”) in accordance with the table in [subsection \(2\)](#) where—
- O makes a request to R (see [section 320](#)) for R to assist O’s carrying out of functions which correspond or are similar to functions of R under a relevant enactment,
  - R considers that it would be appropriate to assist O (see [section 321](#)), and
  - where the request is made otherwise than under or in accordance with a qualifying cooperation arrangement, the Secretary of State authorises R to assist O (see [section 322](#)).
- (2) The table in this subsection is—

Where the enactment in question is—	The regulator that may assist the overseas regulator is—	The regulator may assist the overseas regulator by—
Part 1 of CA 1998 (competition)	the CMA	exercising its powers under sections 26 to 29 of CA 1998 as if, by assisting O’s carrying out of functions which correspond or are similar to the functions of the CMA under Part 1 of that Act, the CMA were carrying out an investigation under section 25 of that Act
Part 3 of EA 2002 (mergers)	the CMA	exercising its powers under section 109 of EA 2002 as if assisting O’s carrying out of functions which correspond or are similar to the functions of the CMA under Part 3 of that Act were a “permitted purpose” for the purposes of that section
Part 6 of EA 2002 (cartel offence)	the CMA	exercising its powers under sections 193 and 194 of EA 2002 as if, by assisting O’s carrying



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Where the enactment in question is—	The regulator that may assist the overseas regulator is—	The regulator may assist the overseas regulator by—
Schedule 5 to CRA 2015 (investigatory powers)	an enforcer for the purposes of Schedule 5 to CRA 2015 (see paragraph 2 of that Schedule)	out of functions which correspond or are similar to the functions of the CMA under Part 6 of that Act, the CMA were carrying out an investigation under section 192 of that Act exercising the powers under Parts 3 and 4 of Schedule 5 to CRA 2015 in connection with an infringement of the law of, or other requirement imposed in, the country or territory of O which appears to R to make provision corresponding or similar to an enactment or other obligation or rule of law listed in <a href="#">Schedule 15</a> to this Act
Part 1 of this Act (digital markets)	the CMA	exercising its powers under any of sections <a href="#">69</a> , <a href="#">71</a> and <a href="#">79</a> as if assisting O's carrying out of a function which corresponds or is similar to a digital markets function (as defined in section <a href="#">118</a> ) were itself a digital markets function
Part 1 of this Act (digital markets)	the CMA	exercising its powers under any of sections <a href="#">72</a> , <a href="#">74</a> and <a href="#">75</a> as if, by assisting O's carrying out of any investigation which corresponds or is similar to a digital markets investigation (as defined in section <a href="#">118</a> ), the CMA were carrying out a digital markets investigation

(3) For the purposes of the exercise by R of the powers under Parts 3 and 4 of Schedule 5 to CRA 2015 by virtue of this Chapter—

(a) paragraphs 13, 19 and 20 of that Schedule are to be ignored;

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- (b) where a power is exercisable only by an enforcer of a particular description, the power is exercisable by R only if R is an enforcer of that description;
  - (c) references in Part 4 of that Schedule to the enforcer’s legislation, in relation to a domestic enforcer, are to be read in relation to R as references to the law of, or other requirement imposed in, the country or territory of O mentioned in the entry for that Schedule in the table in [subsection \(2\)](#).
- (4) Any reference in an enactment (other than in this Chapter) to the functions of a relevant regulator under a relevant enactment includes a reference to those functions as exercised by virtue of this Chapter.
- (5) In this Chapter—
- “cooperation arrangement” means an arrangement or agreement relating in whole or in part to cooperation in matters relating to the subject matter of a relevant enactment;
  - “overseas regulator” or “O” means a person or body in a country or territory outside the United Kingdom which appears to R to exercise functions of a public nature corresponding or similar to functions of R;
  - “qualifying cooperation arrangement” means any cooperation arrangement—
    - (a) to which the United Kingdom and the country or territory of O are parties, and
    - (b) which provides for the provision of mutual assistance as between the United Kingdom and that country or territory, or as between R and persons or bodies in that country or territory, in relation to matters relating to—
      - (i) functions of R under a relevant enactment, or
      - (ii) functions of O which correspond or are similar to those functions;
  - “relevant enactment” means an enactment listed in the first column of the table in [subsection \(2\)](#);
  - “relevant regulator” or “R” means a regulator listed in the second column of the table in [subsection \(2\)](#).

#### Commencement Information

**I9** S. 319 not in force at Royal Assent, see [s. 339\(1\)](#)

### 320 Requests for investigative assistance

- (1) [Subsection \(2\)](#) makes provision about requests from O for the purposes of [section 319\(1\)\(a\)](#).
- (2) A request from O to R for R to assist O must—
  - (a) be made in writing,
  - (b) describe the matter in respect of which R’s assistance is requested, and
  - (c) include details of any penalty or sanction that could be imposed as a result of the carrying out by O of the functions in respect of which R’s assistance is requested.

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### Commencement Information

**110** S. 320 not in force at Royal Assent, see [s. 339\(1\)](#)

## **321 The appropriateness of providing investigative assistance**

- (1) This subsection makes provision about how R is to consider whether it would be appropriate to assist O for the purposes of [section 319\(1\)\(b\)](#).
- (2) In considering whether it would be appropriate to assist O, R must have regard to whether—
  - (a) R would be able to exercise its powers under the relevant enactment concerned in a corresponding or similar case arising in the United Kingdom;
  - (b) the United Kingdom and the country or territory of O, or R and O, are parties to a cooperation arrangement;
  - (c) the matter in respect of which the assistance is requested is sufficiently serious to justify R assisting O.
- (3) R may consider that it would not be appropriate to assist O unless O undertakes to make such contribution as R considers appropriate towards the cost of R doing so.
- (4) R must consider that it would not be appropriate to assist O where any of subsections [\(5\)](#) to [\(8\)](#) apply.
- (5) This subsection applies where R considers that—
  - (a) a person or body in the country or territory of O (whether or not O) would not provide corresponding or substantially similar assistance to R, unless R considers that there is an overriding public benefit to the United Kingdom in assisting O;
  - (b) assisting O would be contrary to the public interest.
- (6) This subsection applies where—
  - (a) the matter to which the request relates concerns the investigation of crime or the bringing of criminal proceedings, and
  - (b) the request is made otherwise than under or in accordance with a qualifying cooperation arrangement.
- (7) This subsection applies where R would not be able to disclose, under Part 9 of EA 2002 (information), to O any information obtained by R in the course of assisting O.
- (8) This subsection applies where—
  - (a) the request relates to a matter in respect of which in a corresponding or similar case arising in the United Kingdom R would not be able to exercise its powers under the relevant enactment concerned unless R has reasonable grounds for suspecting that there has, or may have, been a breach of the law (“the relevant UK law”), and
  - (b) R does not have reasonable grounds for suspecting that there has, or may have, been a breach of the law of the country or territory of O which appears to R to make provision corresponding or similar to the relevant UK law in question.
- (9) For the purposes of [subsection \(8\)\(b\)](#), R is to regard as conclusive a certificate issued by O as to whether there has, or may have, been a breach of the law of the country or territory of O.

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### Commencement Information

**III** S. 321 not in force at Royal Assent, see [s. 339\(1\)](#)

## 322 Authorisation of the provision of investigative assistance

- (1) This section makes provision about how the Secretary of State authorises R to assist O for the purposes of [section 319\(1\)\(c\)](#).
- (2) The Secretary of State may authorise R to assist O either—
  - (a) in relation to one or more specific requests for assistance, or
  - (b) generally in respect of requests for assistance of a particular description (including in respect of requests from particular overseas regulators).
- (3) The Secretary of State may withdraw any general authorisation given under [subsection \(2\)\(b\)](#).
- (4) The Secretary of State must publish—
  - (a) any general authorisation given under [subsection \(2\)\(b\)](#);
  - (b) notice of any withdrawal of a general authorisation under [subsection \(3\)](#).
- (5) In considering whether to authorise R to assist O (whether specifically or generally), the Secretary of State must have regard to whether—
  - (a) O’s request for assistance is made under, or in accordance with, the terms of an arrangement or agreement (other than a qualifying cooperation arrangement) to which the United Kingdom is a party (and, where it is, the Secretary of State must also have regard to the terms of the arrangement or agreement);
  - (b) it would be more appropriate, in relation to the matter in respect of which R’s assistance is requested, for—
    - (i) any of R’s powers under the relevant enactment concerned to be exercised solely on behalf of R (and not by virtue of this Chapter), or
    - (ii) for functions to be exercised by another person or body in the United Kingdom or in a country or territory other than the country or territory of O;
  - (c) R assisting O would be contrary to the public interest.
- (6) In authorising R to assist O, the Secretary of State may impose conditions on R doing so.
- (7) The conditions that may be imposed include conditions—
  - (a) requiring R, before assisting O, to obtain an undertaking from O that any information obtained by R in assisting O will not be used, or will only be used, for specified purposes;
  - (b) requiring R not to use specified powers that would otherwise be available to R in assisting O;
  - (c) requiring R to assist O by using specified powers available to R only in a specified manner;
  - (d) requiring R to assist O only in respect of specified matters.
- (8) In [subsection \(7\)](#), “specified” means specified in a condition imposed by the Secretary of State under [subsection \(6\)](#).

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#### Commencement Information

I12 S. 322 not in force at Royal Assent, see [s. 339\(1\)](#)

### 323 Notifications in respect of requests for investigative assistance

- (1) R must notify the Secretary of State that R has received a request for assistance from O where—
  - (a) R considers that it would be appropriate for R to assist O, and
  - (b) the Secretary of State has not given R a general authorisation to provide O with the assistance requested (see [section 322\(2\)\(b\)](#)).
- (2) But [subsection \(1\)](#) does not apply where O's request is made under or in accordance with a qualifying cooperation arrangement.
- (3) R must notify O as to whether R will be providing the assistance requested and, where relevant, of any conditions imposed on that assistance (see [section 322\(6\)](#)).

#### Commencement Information

I13 S. 323 not in force at Royal Assent, see [s. 339\(1\)](#)

### 324 Guidance in connection with investigative assistance

- (1) The CMA must prepare and publish guidance about—
  - (a) the making and consideration of requests for assistance under this Chapter, and
  - (b) the provision of assistance under this Chapter.
- (2) The CMA may at any time prepare and publish revised or new guidance.
- (3) No guidance is to be published under this section without the approval of the Secretary of State.
- (4) In preparing guidance under this section the CMA must consult such persons as it considers appropriate.
- (5) A relevant regulator must have regard to the guidance for the time being in force when it is exercising functions under or in connection this Chapter.

#### Commencement Information

I14 S. 324 not in force at Royal Assent, see [s. 339\(1\)](#)

### 325 Amendments to other legislation

[Schedule 28](#) makes amendments to other legislation in connection with the provision made by this Chapter.

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### Commencement Information

**I15** S. 325 not in force at Royal Assent, see [s. 339\(1\)](#)

## CHAPTER 3

### MISCELLANEOUS

#### 326 Disclosing information overseas

- (1) Part 9 of EA 2002 (information) is amended as follows.
- (2) For section 243 (overseas disclosures) substitute—

#### “243A Overseas disclosures for both overseas and domestic purposes

- (1) A public authority which holds information to which section 237 applies (“the discloser”) may disclose that information to an overseas public authority for the purpose of facilitating both—
  - (a) the exercise by the discloser of any function it has under or by virtue of this Act or any other enactment, and
  - (b) the exercise by the overseas public authority of any function which it has relating to—
    - (i) carrying out investigations in connection with the enforcement of any relevant law by means of civil proceedings;
    - (ii) bringing civil proceedings for the enforcement of such law or the conduct of such proceedings;
    - (iii) the investigation of crime;
    - (iv) bringing criminal proceedings or the conduct of such proceedings;
    - (v) deciding whether to start or bring to an end such investigations or proceedings.
- (2) [Subsection \(1\)](#) does not apply to any of the following—
  - (a) information which is held by a person who is a private designated enforcer for the purposes of [Chapter 3](#) of [Part 3](#) of the Digital Markets, Competition and Consumers Act 2024 (see [section 151](#) of that Act);
  - (b) information which comes to a public authority in connection with an investigation under Part 4 or section 174 of this Act;
  - (c) information which comes to a public authority in connection with an investigation under section 11 of the Competition Act 1980;
  - (d) legacy information within the meaning of [subsection \(5\)](#).
- (3) In [subsection \(1\)\(a\)](#), the reference to an enactment includes a reference to an enactment contained in—
  - (a) an Act of the Scottish Parliament;
  - (b) Northern Ireland legislation;

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**Status:** Point in time view as at 24/05/2024. This version of this part contains provisions that are prospective.

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(c) subordinate legislation.

(4) In [subsection \(1\)\(b\)\(i\)](#), “relevant law” means—

- (a) this Act, any enactment specified in Schedule 14 and such subordinate legislation as is specified by order for the purposes of section 238(1);
- (b) any enactment, obligation or rule of law specified in [Schedule 15](#) to the Digital Markets, Competition and Consumers Act 2024 (consumer protection enactments);
- (c) any legislation, or any obligation or rule of law in a country or territory outside the United Kingdom which appears to the discloser to make provision corresponding or similar to anything within paragraphs (a) and (b).

(5) In [subsection \(2\)\(d\)](#), “legacy information” means information which—

- (a) comes to a public authority in connection with the exercise of its functions under or by virtue of paragraphs 15 to 18 of Schedule 24 relating to investigations under Parts 4 or 6 of the 1973 Act;
- (b) came to a public authority—
  - (i) before the coming into force of this section, and
  - (ii) in connection with the exercise of its functions under or by virtue of paragraphs 15 to 18 of Schedule 24 relating to investigations under Part 5 of the 1973 Act;
- (c) came to a public authority—
  - (i) before 1 July 2021, and
  - (ii) in connection with an investigation under Part 3 of the Enterprise Act 2002.

#### **243B Overseas disclosures for overseas purposes only**

- (1) A public authority which holds information to which section 237 applies (“the discloser”) may disclose that information to an overseas public authority for the purpose mentioned in [section 243A\(1\)\(b\)](#).
- (2) [Subsection \(2\)](#) of [section 243A](#) applies for the purposes of [subsection \(1\)](#) of [this section](#) as it applies for the purposes of [subsection \(1\)](#) of [that section](#).

#### **243C Overseas disclosures for designated cooperation arrangement purposes**

- (1) A public authority which holds information to which section 237 applies (“the discloser”) may disclose that information to an overseas public authority for a purpose permitted under or by virtue of a designated cooperation arrangement.
- (2) “Designated cooperation arrangement” means an arrangement or agreement that meets all of Conditions A to D.
- (3) Condition A is that the arrangement or agreement is between—
  - (a) a public authority and an overseas public authority, or
  - (b) the United Kingdom and a country or territory.
- (4) Condition B is that the arrangement or agreement relates to cooperation between—

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- (a) the public authority and the overseas public authority, or
- (b) public authorities in the United Kingdom and persons or bodies in that country or territory,

for the purposes of facilitating the exercise of functions related to anything mentioned in sub-paragraphs (i) to (v) of [section 243A\(1\)\(b\)](#).

- (5) Condition C is that the arrangement or agreement provides for—
  - (a) the overseas public authority and the public authority, or
  - (b) a person or body in that country or territory and public authorities in the United Kingdom,
 to provide corresponding or substantially similar assistance to each other for the purposes of facilitating the exercise of functions related to anything mentioned in sub-paragraphs (i) to (v) of [section 243A\(1\)\(b\)](#).
- (6) Condition D is that the arrangement or agreement is designated in regulations made by the Secretary of State.
- (7) Before designating an arrangement or agreement in regulations under [subsection \(6\)](#), the Secretary of State must have regard in particular to whether the arrangement or agreement contains provision restricting or preventing—
  - (a) the use for another purpose of information disclosed for a purpose permitted under or by virtue of the arrangement or agreement;
  - (b) the further disclosure of such information.
- (8) The Secretary of State may not designate an arrangement or agreement in regulations under [subsection \(6\)](#) unless the Secretary of State is satisfied that—
  - (a) the law and practice of the country or territory, or the country or territory of the overseas public authority, with whom the arrangement or agreement is with provides appropriate protection against self-incrimination in criminal proceedings, and
  - (b) the law and practice of that country or territory provides appropriate protection in relation to the storage and disclosure of confidential information.
- (9) For the purposes of [subsection \(8\)](#), protection is appropriate if it provides protection in relation to the matter in question which corresponds or is substantially similar to that so provided in any part of the United Kingdom.
- (10) Regulations under [subsection \(6\)](#) are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### **243D Use and further disclosure of information disclosed under sections 243A and 243B**

- (1) Subsections (2) and (3) apply to information disclosed by virtue of [section 243A](#) to the extent that the disclosure was to facilitate the exercise by the discloser of any function it has under or by virtue of this Act or any other enactment (“the original function”) in relation to a particular matter (“the original matter”).



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- (2) The information must not be used by the overseas public authority other than for facilitating the exercise by the discloser of the original function in relation to the original matter unless—
  - (a) the use is for the purpose of facilitating the exercise by the discloser of any function it has under this Act or any other enactment (other than the original function) whether or not in relation to the original matter, and
  - (b) the discloser consents to the use of that information for that purpose.
- (3) The information must not be further disclosed by the overseas public authority unless—
  - (a) the further disclosure is for the purpose of facilitating the exercise by the discloser of any function it has under this Act or any other enactment (whether or not the original function) whether or not in relation to the original matter, and
  - (b) the discloser consents to the further disclosure of the information for that purpose.
- (4) Subsections (5) and (6) apply to information disclosed by virtue of section 243A or 243B to the extent that the disclosure was to facilitate the exercise of functions of an overseas public authority relating to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b) (“the original function”) in relation to a particular matter (“the original matter”).
- (5) The information must not be used by the overseas public authority other than for facilitating the exercise by the authority of the original function in relation to the original matter unless—
  - (a) the use is for the purpose of facilitating the exercise of a function which the authority has relating to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b) (other than the original function) whether or not in relation to the original matter, and
  - (b) the discloser consents to the use of that information for that purpose.
- (6) The information must not be further disclosed by the overseas public authority unless—
  - (a) the further disclosure is for the purpose of facilitating the exercise of any of its functions relating to anything mentioned in sub-paragraphs (i) to (v) of subsection (1)(b) of section 243A (whether or not the original function) whether or not in relation to the original matter, and
  - (b) the discloser consents to the further disclosure of the information for that purpose.
- (7) In deciding whether to consent to the use or further disclosure of information for the purposes of subsection (2)(b), (3)(b), (5)(b) or (6)(b), the discloser must have regard to the considerations in section 243F to which it would be required to have regard if it were deciding to disclose the information under 243A or 243B.
- (8) Nothing in this section prevents information being used, or further disclosed, by the overseas public authority if that use, or further disclosure, is required under the law of the country or territory of the authority.

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### **243E Directions by the Secretary of State relating to overseas disclosures under sections 243A and 243B**

- (1) The Secretary of State may direct that a disclosure permitted under section 243A or 243B must not be made if the Secretary of State thinks that, in connection with any matter in respect of which the disclosure could be made, it is more appropriate—
  - (a) if any investigation is to be carried out, that it is carried out by an authority in the United Kingdom or in another specified country or territory (rather than by the overseas public authority);
  - (b) if any proceedings are to be brought, that they are brought in a court in the United Kingdom or in another specified country or territory (rather than in the country or territory of the overseas authority).
- (2) In subsection (1), “specified” means specified in the direction.
- (3) The Secretary of State must take such steps as the Secretary of State thinks are appropriate to bring a direction under subsection (1) to the attention of persons likely to be affected by it.

### **243F Relevant considerations relating to overseas disclosures under sections 243A and 243B**

- (1) This section applies when a public authority is deciding whether to make a disclosure under section 243A or 243B.
- (2) In deciding whether to make a disclosure under section 243A, the public authority must have regard in particular to the following considerations—
  - (a) whether the law and practice of the country or territory to whose authority the disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings;
  - (b) whether the law and practice of that country or territory provides appropriate protection in relation to the storage and disclosure of confidential information.
- (3) In deciding whether to make a disclosure under section 243B, the public authority must have regard in particular to the considerations in subsection (2) and the following additional considerations—
  - (a) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure;
  - (b) whether the disclosure would further the aims or purposes of any convention or treaty relating in whole or in part to cooperation in matters relating to competition or consumer protection to which the United Kingdom and the country or territory of the authority to whom the disclosure would be made are parties;
  - (c) whether there are arrangements in place for the provision of mutual assistance as between the United Kingdom and that country or territory to whose authority the disclosure would be made in relation to the disclosure of information of the kind to which section 237 applies;

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- (d) whether a person or body in that country or territory would assist the public authority in a way that corresponds or is substantially similar to the assistance that it is proposed the public authority give to the overseas public authority by making the disclosure.
- (4) For the purposes of this section, protection is appropriate if it provides protection in relation to the matter in question which corresponds or is substantially similar to that so provided in any part of the United Kingdom.
- (5) The Secretary of State may by regulations amend subsections (2) and (3) so as to—
- (a) alter any consideration for the time being included in those subsections;
  - (b) add further considerations;
  - (c) remove any considerations.
- (6) Regulations under subsection (5) are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In section 244 (specified information: considerations relevant to disclosure)—
- (a) in subsection (2), for “information whose disclosure the authority thinks is contrary to the public interest” substitute “sensitive information”;
  - (b) in subsection (3), for the words after “(so far as practicable)” to the end of paragraph (b) substitute “any commercial information or private information”.
- (4) In section 245 (offences) in subsection (2), for “243(4)” substitute “243E”.
- (5) For section 246 substitute—

#### “246A Interpretation

In this Part—

“commercial information” means information relating to any business of an undertaking whose disclosure the public authority concerned or, for the purposes of section 243C the Secretary of State, thinks might significantly harm the undertaking’s legitimate business interests;

“confidential information” means commercial information, private information or sensitive information;

“overseas public authority” means a person or body in any country or territory outside the United Kingdom which appears to the discloser (within the meaning of any of sections 243A to 243C) to exercise functions of a public nature in relation to anything mentioned in subparagraphs (i) to (v) of section 243A(1)(b);

“private information” mean information relating to the private affairs of an individual whose disclosure the public authority concerned, or for the purposes of section 243C the Secretary of State, thinks might significantly harm the individual’s interests;

“sensitive information” means information whose disclosure the public authority concerned or, for the purposes of section 243C the Secretary of State, thinks would be contrary to the public interest;

*Status: Point in time view as at 24/05/2024. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)*

“subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 and includes an instrument made under—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.”

(6) In section 59 of the Companies (Audit, Investigations and Community Enterprises) Act 2004 (information), in subsection (6)—

- (a) for “section 243(6)” substitute “[section 243F\(2\)](#) and (3)”;
- (b) for “(overseas disclosures)” substitute “(relevant considerations relating to overseas disclosures)”.

#### Commencement Information

**I16** S. 326 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

### 327 Duty of expedition on the CMA and sectoral regulators

(1) In section 25 of ERRA 2013 (the Competition and Markets Authority), after subsection (4) insert—

“(5) In making any decision, or otherwise taking action, for the purposes of any of its functions within [Schedule 4A](#) the CMA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

(2) After Schedule 4 to ERRA 2013 insert—

“SCHEDULE 4A

Section 25

FUNCTIONS TO WHICH THE CMA’S DUTY OF EXPEDITION APPLIES

#### PART 1

##### INTRODUCTION

- 1 The following functions are functions within this Schedule for the purposes of section 25(5).

#### PART 2

##### COMPETITION FUNCTIONS

##### *Functions under the Enterprise Act 2002*

- 2 Functions under Part 3 of the 2002 Act (mergers) other than functions under—

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**Changes to legislation:** There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)

- (a) section 94B (statement of policy about functions under sections 94 and 94AA);
  - (b) section 106 (advice and information about references under section 22 or 33);
  - (c) section 116 (statement of policy about penalties).
- 3 Functions under Part 4 of the 2002 Act (market studies and market investigations) other than functions under—
- (a) section 166 (register of undertakings and orders);
  - (b) [section 167C](#) (statement of policy about functions under sections 167 and 167A);
  - (c) section 171 (advice and information about market investigation references);
  - (d) section 174E (statement of policy about penalties).
- 4 Functions under Part 6 of the 2002 Act (the cartel offence) other than functions under section 190A (cartel offence: prosecution guidance).

#### *Functions under Part 1 of the Competition Act 1998*

- 5 Functions under Part 1 of the 1998 Act (competition) other than functions under—
- (a) section 31D (guidance about the acceptance of commitments under section 31A);
  - (b) [section 35C](#) (statement of policy about penalties under sections 31E, 34 and 35A);
  - (c) section 38 (the appropriate level of a penalty);
  - (d) section 40B (statement of policy about penalties under section 40A);
  - (e) section 51 (CMA rules);
  - (f) section 52 (advice and information about the Chapter 1 and 2 prohibitions);
  - (g) section 54 (functions of sectoral regulators).

#### *Functions under Chapter 3 of Part 2 of the Water Industry Act 1991*

- 6 Functions under sections 32 to 35 of the Water Industry Act 1991 (protection of consumers: competition provisions).

### **PART 3**

#### CONSUMER FUNCTIONS

#### *Functions under Part 3 of the Digital Markets, Competition and Consumers Act 2024*

- 7 Functions under Part 3 of the Digital Markets, Competition and Consumers Act 2024 (enforcement powers for infringements of consumer protection law) other than functions under—
- (a) [section 199](#) (statement of policy about penalties);

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*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)*

- (b) [sections 210](#) and [211](#) (rules about direct enforcement functions);
  - (c) [section 212](#) (guidance about direct enforcement functions).
- 8 Functions under Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024 (protection from unfair trading).

*Functions under the Consumer Rights Act 2015*

- 9 (1) Functions under Schedule 3 to the Consumer Rights Act 2015 (enforcement of law on unfair contract terms and notices) other than functions under paragraph 7(2) to (5) of that Schedule (provision of information and advice).
- (2) Functions under Schedule 5 to the Consumer Rights Act 2015 (investigatory powers) other than functions under paragraph 16F of that Schedule (statement of policy about penalties).

*Functions under the Business Protection from Misleading Marketing Regulations 2008*

- 10 Functions under the Business Protection from Misleading Marketing Regulations 2008 ([S.I. 1276/2008](#)) other than functions under regulation 20(2) of those Regulations (provision of information and advice).

## PART 4

### DIGITAL MARKET FUNCTIONS

*Functions under Part 1 of the Digital Markets, Competition and Consumers Act 2024*

- 11 Functions under Part 1 of the Digital Markets, Competition and Consumers Act 2024 (digital markets) other than functions under—
- (a) [section 60](#) (content of report under [section 57](#) etc);
  - (b) [section 67](#) (regulations about duty to notify);
  - (c) [section 91](#) (statement of policy on penalties);
  - (d) [section 114](#) (guidance about functions under Part 1).”
- (3) In consequence of the amendments made by subsections (1) and (2)—
- (a) in section 103 of EA 2002 (duty of expedition in relation to references)—
    - (i) in the heading, at the end insert “under section 45 or 62”;
    - (ii) omit subsection (1);
  - (b) in the Water Mergers (Modification of Enactments) Regulations 2004 ([S.I. 2004/3202](#)) omit Article 25A (modification of section 103 of EA 2002).
- (4) [Schedule 29](#) makes provision imposing a duty of expedition on sectoral regulators in respect of their competition functions that are exercisable concurrently with the CMA.

*Status: Point in time view as at 24/05/2024. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5. (See end of Document for details)*

#### Commencement Information

**I17** S. 327 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

### **328 Offenders assisting investigations and prosecutions: powers of the CMA**

- (1) In Chapter 2 of Part 2 of the Serious Organised Crime and Police Act 2005 (offenders assisting investigations and prosecutions), section 71 (assistance by offender: immunity from prosecution) is amended as follows.
- (2) In subsection (4), after paragraph (dab) insert—  
“(dac) the Competition and Markets Authority;”.
- (3) In subsection (6A), in the words before paragraph (a), after “the Bank of England,” insert “the Competition and Markets Authority”.
- (4) After subsection (7) insert—  
“(8) The Competition and Markets Authority, or a person designated by the Competition and Markets Authority under subsection (4)(e), may not give an immunity notice (but has the other powers available to specified prosecutors).”

#### Commencement Information

**I18** S. 328 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

### **329 Removal of limit on the tenure of a chair of the Competition Appeal Tribunal**

In Schedule 2 to EA 2002 (the Competition Appeal Tribunal), in paragraph 2 (tenure etc) omit sub-paragraph (2).

#### Commencement Information

**I19** S. 329 not in force at Royal Assent, see [s. 339\(1\)](#)

**Status:**

Point in time view as at 24/05/2024. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 5.