

Status: Point in time view as at 24/05/2024. 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 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 143(1)

CIVIL PENALTIES ETC IN CONNECTION WITH COMPETITION INVESTIGATIONS

PART 1

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

PROSPECTIVE

- 2 (1) In section 26 (investigations: powers to require documents and information), subsection (3) is amended as follows.
- (2) In the words before paragraph (a) omit “indicate”.
- (3) In paragraph (a), at the beginning insert “indicate”.
- (4) For paragraph (b) substitute—
- “(b) include information about the possible consequences of failing to comply with the notice.”

Commencement Information

- I2** Sch. 10 para. 2 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 3 (1) In section 26A (investigations: power to ask questions), subsection (5) is amended as follows.
- (2) In the words before paragraph (a) omit “indicate”.
- (3) In paragraph (a), at the beginning insert “indicate”.

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(4) For paragraph (b) substitute—

“(b) include information about the possible consequences of failing to comply with the notice.”

Commencement Information

I3 Sch. 10 para. 3 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

4 In section 27 (power to enter business premises without a warrant), in subsection (2), for paragraph (c) substitute—

“(c) includes information about the possible consequences of failing to comply with the notice.”

Commencement Information

I4 Sch. 10 para. 4 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

5 (1) In section 29 (entry of premises under warrant: supplementary), subsection (1) is amended as follows.

(2) In the words before paragraph (a) omit “indicate”.

(3) In paragraph (a), at the beginning insert “indicate”.

(4) For paragraph (b) substitute—

“(b) include information about the possible consequences of failing to comply with the notice.”

Commencement Information

I5 Sch. 10 para. 5 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

6 (1) In section 40ZD (information relating to transferred EU anti-trust commitments and transferred EU anti-trust directions), subsection (3) is amended as follows.

(2) The words from “indicates the subject matter” to the end become paragraph (a).

(3) After that paragraph insert “, and

(b) includes information about the possible consequences of failing to comply with the notice.”

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Commencement Information

I6 Sch. 10 para. 6 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

7 For the italic heading before section 40A substitute—

“Civil sanctions: failure to comply with investigative requirements”

Commencement Information

I7 Sch. 10 para. 7 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

8 Before section 40A (but after the italic heading substituted by [paragraph 7](#)) insert—

“40ZE Enforcement of requirements: imposition of penalties

- (1) The CMA may impose a penalty on a person in accordance with section 40A where the CMA considers that—
- (a) the person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 26, 26A, 27, 28, 28A or 40ZD;
 - (b) the person has, without reasonable excuse, obstructed an officer acting in the exercise of the officer’s powers under section 27 or under a warrant issued under section 28 or 28A;
 - (c) the person, having been required to produce a document under section 26, 27, 28 or 28A, has, without reasonable excuse—
 - (i) destroyed or otherwise disposed of, falsified or concealed the document, or
 - (ii) caused or permitted the document’s destruction, disposal, falsification or concealment;
 - (d) the person has, without reasonable excuse, provided information that was false or misleading in a material particular to the CMA in connection with any function of the CMA under this Part;
 - (e) the person has, without reasonable excuse, provided information that was false or misleading in a material particular to another person knowing that the information was to be used for the purpose of providing information to the CMA in connection with any function of the CMA under this Part.
- (2) But the CMA may not proceed against a person under this section in relation to an act or omission which constitutes an offence under any of sections 42 to 44 if the person has, by reason of that act or omission, been found guilty of that offence.

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- (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 40B at the time when the act or omission concerned occurred.
- (4) In this section—
- (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form;
 - (b) the reference to concealing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (5) 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) 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 under section 40B of the 1998 Act at the time when the act or omission concerned occurred.””

Commencement Information

18 Sch. 10 para. 8 not in force at Royal Assent, see [s. 339\(1\)](#)

- 9 (1) Section 40A (penalties: failure to comply with requirements) is amended as follows.
- (2) In the heading, for “failure to comply with requirements” substitute “amount”.
- (3) For subsection (1) substitute—
- “(1A) A penalty imposed under [section 40ZE\(1\)](#) is to be of such amount as the CMA considers appropriate.”
- (4) In subsection (2), for the words before paragraph (a), substitute “A penalty imposed under [section 40ZE\(1\)\(a\)](#) may be—”.
- (5) After subsection (2) insert—
- “(2A) A penalty imposed under any of [section 40ZE\(1\)\(b\)](#) to (e) must be a fixed amount.”
- (6) In subsection (3)—
- (a) for the words before paragraph (a) substitute “A penalty imposed under [section 40ZE\(1\)](#) on a person who is not an undertaking must not—”;

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- (b) in paragraph (a), for “such amount as the Secretary of State may by order specify” substitute “£30,000”;
 - (c) in paragraph (b), for “such amount per day as the Secretary of State may so specify” substitute “£15,000 per day”;
 - (d) in paragraph (c) omit “as the Secretary of State may so specify”.
- (7) After subsection (3) insert—
- “(3A) A penalty imposed under [section 40ZE\(1\)](#) on a person who is an undertaking must not—
- (a) in the case of a fixed amount, exceed 1% 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 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.”
- (8) Omit subsections (4) and (5).
- (9) In subsection (6), in paragraph (a)—
- (a) for “notice under section 112” substitute “provisional penalty notice under [section 112\(A1\)](#)”;
 - (b) for “subsection (9)” substitute “[section 40ZE\(5\)](#)”.
- (10) After subsection (7) insert—
- “(7A) 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.”
- (11) In subsection (8), for “an order under subsection (3)” substitute “regulations under [subsection \(7A\)](#)”.
- (12) Omit subsection (9).
- (13) At the end insert—
- “(10) The Secretary of State may by regulations make provision for determining the turnover and daily turnover of an undertaking for the purposes of this section.
- (11) Regulations under [subsection \(10\)](#) may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as 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.
- (12) Regulations under [subsection \(10\)](#) 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 \(11\)](#)).”

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Commencement Information

I9 Sch. 10 para. 9 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

- 10 (1) Section 40B (statement of policy on penalties) is amended as follows.
- (2) In subsection (1)—
- (a) for “use of its powers” substitute “exercise of functions”;
 - (b) for “40A” substitute “[40ZE](#)”.
- (3) In subsection (2), for “40A” substitute “[40ZE](#)”.
- (4) In subsection (4), for “such persons” substitute “the Secretary of State and such other persons”.
- (5) After subsection (5) insert—
- “(5A) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.”
- (6) Omit subsection (6).

Commencement Information

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

PROSPECTIVE

- 11 (1) Section 42 (offences) is amended as follows.
- (2) For the heading substitute “Obstruction”.
- (3) After subsection (7) insert—
- “(8) A person is not guilty of an offence under subsection (5) or (7) by reason of any act or omission in relation to which the CMA has proceeded against the person under [section 40ZE\(1\)](#).”

Commencement Information

I11 Sch. 10 para. 11 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 12 In section 43 (destroying or falsifying documents), after subsection (1) insert—

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“(1A) A person is not guilty of an offence under subsection (1) by reason of any act or omission in relation to which the CMA has proceeded against the person under [section 40ZE\(1\)](#).”

Commencement Information

I12 Sch. 10 para. 12 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

13 In section 44 (false or misleading information), after subsection (2) insert—

“(2A) A person is not guilty of an offence under this section by reason of any act or omission in relation to which the CMA has proceeded against the person under [section 40ZE\(1\)](#).”

Commencement Information

I13 Sch. 10 para. 13 not in force at Royal Assent, see [s. 339\(1\)](#)

PART 2

INVESTIGATIONS UNDER PART 3 OF EA 2002 (MERGERS)

PROSPECTIVE

14 In Part 3 of EA 2002 (mergers), Chapter 5 (supplementary: investigation powers) is amended as follows.

Commencement Information

I14 Sch. 10 para. 14 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

15 (1) Section 110 (enforcement of powers under section 109: general) is amended as follows.

(2) In the heading, for “general” substitute “imposition of penalties”.

(3) For subsection (1) substitute—

“(1) The CMA may impose a penalty on a person in accordance with section 111 where the CMA considers that—

(a) the person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109;

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- (b) the person has, without reasonable excuse, obstructed or delayed another person in the exercise of the other person’s powers under section 109(6);
 - (c) the person has, without reasonable excuse, altered, suppressed or destroyed any document which the person has been required to produce by a notice under section 109.
- (1A) The appropriate authority may impose a penalty on a person in accordance with section 111 where the authority considers that—
- (a) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to the authority in connection with any of the authority’s functions under this Part;
 - (b) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to another person knowing that the information was to be used for the purpose of supplying information to the authority in connection with any function of the authority under this Part.
- (1B) In this section, and in sections 111 to 117, “the appropriate authority” means—
- (a) the CMA;
 - (b) the Secretary of State;
 - (c) OFCOM.
- (1C) But the appropriate authority may not proceed against a person under this section in relation to an act or omission which constitutes an offence under section 116A or 117 if the person has, by reason of that act or omission, been found guilty of that offence.”
- (4) In subsection (2), for “subsection (1)” substitute “[subsection \(1\)\(a\)](#)”.
- (5) Omit subsections (3) to (8).
- (6) For subsection (9) substitute—
- “(9) In deciding whether and, if so, how to proceed under subsection (1) or (1A) or section 39(4) or 51(4) (including that enactment as applied by section 65(3))—
- (a) the CMA must have regard to the statement of policy which was most recently published under section 116 at the time when the act or omission concerned occurred;
 - (b) OFCOM must have regard to the statement of policy which was most recently published under section 392 of the Communications Act 2003 (penalties imposed by OFCOM) at the time when the act or omission concerned occurred.”

Commencement Information

I15 Sch. 10 para. 15 not in force at Royal Assent, see [s. 339\(1\)](#)

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PROSPECTIVE

- 16 (1) Section 110A (restriction on powers to impose penalties under section 110) is amended as follows.
- (2) In subsection (1)—
- (a) for “110(1) or (3)” substitute “110(1)(a) or (b)”;
 - (b) for “4” substitute “ten”.
- (3) In subsection (2), for “the failure or (as the case may be) the obstruction or delay” substitute “the act or omission giving rise to the penalty”.

Commencement Information

I16 Sch. 10 para. 16 not in force at Royal Assent, see [s. 339\(1\)](#)

- 17 (1) Section 111 (penalties) is amended as follows.
- (2) In the heading, at the end insert “: amount”.
- (3) In subsection (1)—
- (a) for “(3)” substitute “(1A)”;
 - (b) for “the CMA” substitute “the appropriate authority”.
- (4) In subsection (2) for “110(1)” substitute “110(1)(a)”.
- (5) In subsection (3), for “section 110(3)” substitute “any of section 110(1)(b), (c) or (1A)”.
- (6) In subsection (4)—
- (a) for the words before paragraph (a) substitute “A penalty imposed under section 110(1) or (1A) on a person who does not own or control an enterprise must not—”;
 - (b) in paragraph (a), for “such amount as the Secretary of State may by order specify” substitute “£30,000”;
 - (c) in paragraph (b), for “such amount per day as the Secretary of State may so specify” substitute “£15,000 per day”;
 - (d) in paragraph (c) omit “as the Secretary of State may so specify”.
- (7) After subsection (4) insert—
- “(4A) A penalty imposed under section 110(1) or (1A) on any other person must not—
- (a) in the case of a fixed amount, exceed 1% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person;
 - (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;
 - (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.”

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- (8) In subsection (5), in paragraph (a)—
- (a) for “notice under section 112” substitute “provisional penalty notice under section 112(A1)”;
 - (b) in paragraph (b), in the words before sub-paragraph (i), for “the CMA” substitute “the appropriate authority”.
- (9) Omit subsections (6) and (7).
- (10) Before subsection (8) insert—
- “(7A) The Secretary of State may by regulations amend subsection (4)(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.”
- (11) In subsection (8)—
- (a) for “an order under subsection (4) or (6)” substitute “regulations under [subsection \(7A\)](#)”;
 - (b) after “the CMA” insert “, OFCOM”.
- (12) After subsection (8) insert—
- “(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

I17 Sch. 10 para. 17 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(e\)](#)

PROSPECTIVE

- 18 (1) Section 112 (penalties: main procedural requirements) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) Before the appropriate authority imposes a penalty under section 110(1) or (1A), the authority must give the person concerned a provisional penalty notice.

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(A2) A provisional penalty notice must—

- (a) contain a draft of the final penalty notice the appropriate authority is minded to give to the person under subsection (1),
- (b) invite the making of representations by the person to the authority about the proposed final penalty notice, and
- (c) specify the means by which, and the time by which, such representations must be made.

(A3) The appropriate authority must have regard to any representations received in accordance with a provisional penalty notice before imposing a penalty under section 110(1) or (1A) (and accordingly may not impose such a penalty before the time for the person concerned to make representations to the authority in accordance with that notice has expired).”

(3) In subsection (1)—

- (a) for “(3)” substitute “(1A)”;
- (b) for “the CMA shall give notice of the penalty” substitute “the appropriate authority must give the person concerned a final penalty notice”.

(4) In subsection (2)—

- (a) in the words before paragraph (a), after “The” insert “final penalty”;
- (b) in paragraph (a), for “the CMA” substitute “the appropriate authority”;
- (c) in paragraph (d), for “failure (or as the case may be) the obstruction or delay which the CMA” substitute “act or omission in question which the appropriate authority”;
- (d) in paragraph (e), for “the CMA” substitute “the appropriate authority”;
- (e) in paragraph (f), for “the CMA” substitute “the appropriate authority”.

(5) In subsection (3), for “the CMA” substitute “the appropriate authority”.

(6) After subsection (3) insert—

“(3A) A provisional penalty notice is given by serving a copy of the notice on the person on whom the appropriate authority is minded to impose the penalty.”

(7) In subsection (4), in the words before paragraph (a), for “notice under this section” substitute “final penalty notice”.

Commencement Information

118 Sch. 10 para. 18 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 19 (1) Section 113 (payment and interest by instalments) is amended as follows.
- (2) In subsection (3), for “the CMA” substitute “the appropriate authority”.
 - (3) In subsection (4), for “the CMA” substitute “the appropriate authority”.

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Commencement Information

I19 Sch. 10 para. 19 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 20 (1) Section 114 (appeals in relation to penalties) is amended as follows.
- (2) In subsection (1), for “(3)” substitute “(1A)”
- (3) In subsection (4), in the words before paragraph (a), for “the CMA” substitute “the appropriate authority”.
- (4) In subsection (5), in paragraph (c), for “the CMA” substitute “the appropriate authority”.
- (5) After subsection (5) insert—
- “(5A) In the case of a penalty imposed on a person by the CMA or OFCOM, in considering what is appropriate for the purposes of subsection (5) the Competition Appeal Tribunal must have regard to the relevant guidance.”
- (6) In subsection (7), in paragraph (b), for “the CMA” substitute “the appropriate authority”.
- (7) In subsection (12)—
- (a) the words from ““the appropriate court”” to the end become paragraph (a);
- (b) after that paragraph insert—
- “(b) “the relevant guidance” means—
- (i) in the case of a penalty imposed on a person by the CMA, the statement of policy which was most recently published under section 116 at the time when the act or omission concerned occurred;
- (ii) in the case of a penalty imposed on a person by OFCOM, the statement of policy which was most recently published under section 392 of the Communications Act 2003 (penalties imposed by OFCOM) at the time when the act or omission concerned occurred.”

Commencement Information

I20 Sch. 10 para. 20 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 21 (1) Section 115 (recovery of penalties) is amended as follows.
- (2) In the words before paragraph (a), for “(3)” substitute “(1A)”.

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- (3) In the words after paragraph (b), for “the CMA” in both places it occurs substitute “the appropriate authority”.

Commencement Information

I21 Sch. 10 para. 21 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 22 (1) Section 116 (statement of policy) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The CMA must prepare and publish a statement of policy in relation to—
- (a) the imposition of penalties under section 110, and
- (b) the enforcement of notices under section 109.”
- (3) In subsection (2), for “(3)” substitute “(1A)”.
- (4) In subsection (4), for “such” substitute “the Secretary of State and such other”.
- (5) After subsection (4) insert—
- “(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

I22 Sch. 10 para. 22 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 23 After section 116 insert—
- “116A Intentional destruction etc of documents**
- (1) A person (“P”) commits an offence if the person intentionally alters, suppresses or destroys any document which P has been required to produce by a notice under section 109.
- (2) But P does not commit an offence under [subsection \(1\)](#) by reason of any act or omission if the CMA has proceeded against P under section 110(1) or [\(1A\)](#) in relation to that act or omission.
- (3) A person who commits an offence under [subsection \(1\)](#) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In this section—

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- (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form;
- (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.”

Commencement Information

I23 Sch. 10 para. 23 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 24 (1) Section 117 (false or misleading information) is amended as follows.
- (2) In sub-paragraph (1), in paragraph (a) for “the CMA, OFCOM or the Secretary of State” substitute “the appropriate authority”.
 - (3) In sub-paragraph (2), in the words after paragraph (b), for “the CMA, OFCOM or the Secretary of State” substitute “the appropriate authority”.
 - (4) After subsection (2) insert—
 - “(2A) A person does not commit an offence under subsection (1) or (2) by reason of any act or omission if the appropriate authority has proceeded against the person under section 110(1) or (1A) in relation to that act or omission.”

Commencement Information

I24 Sch. 10 para. 24 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

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

Commencement Information

I25 Sch. 10 para. 25 not in force at Royal Assent, see [s. 339\(1\)](#)

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PART 3

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

PROSPECTIVE

- 26 In Part 4 of EA 2002 (market studies and market investigations), Chapter 4 (supplementary: investigation powers) is amended as follows.

Commencement Information

I26 Sch. 10 para. 26 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 27 (1) Section 174A (enforcement of powers under section 174: general) is amended as follows.
- (2) In the heading, for “general” substitute “imposition of penalties”.
- (3) For subsection (1) substitute—
- “(1) The CMA may impose a penalty on a person in accordance with section 174D where the CMA considers that—
- (a) the person has, without reasonable excuse, failed to comply with any requirement of a notice under section 174;
 - (b) the person has, without reasonable excuse, obstructed or delayed another person in the exercise of the other person’s powers under section 174(7);
 - (c) the person has, without reasonable excuse, altered, suppressed or destroyed any document which the person has been required to produce by a notice under section 174.
- (1A) The relevant authority may impose a penalty on a person in accordance with section 174D where the authority considers that—
- (a) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to the authority in connection with any of the authority’s functions under this Part;
 - (b) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to another person knowing that the information was to be used for the purpose of supplying information to the authority in connection with any function of the authority under this Part.
- (1B) In this section, and in sections 174B to 174D, “the relevant authority” means—
- (a) the CMA;
 - (b) the Secretary of State;
 - (c) the appropriate Minister (so far as the Minister is not the Secretary of State acting alone).

Status: Point in time view as at 24/05/2024. 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 10. (See end of Document for details)

(1C) But the relevant authority may not proceed against a person under this section in relation to an act or omission which constitutes an offence under section 116A or 117 as applied by section 180 if the person has, by reason of that act or omission, been found guilty of that offence.”

(4) In subsection (2), for “subsection (1)” substitute “**subsection (1)(a)**”.

(5) Omit subsections (3) to (7).

(6) In subsection (8)—

- (a) for “(3)” substitute “**(1A)**”;
- (b) for “failure concerned or (as the case may be) the obstruction or delay” substitute “act or omission”.

(7) After subsection (9) insert—

“(10) Sections 112 to 115 apply in relation to a penalty imposed under section 174A(1) or **(1A)** 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;
- (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 174E at the time when the act or omission concerned occurred.””

Commencement Information

I27 Sch. 10 para. 27 not in force at Royal Assent, see **s. 339(1)**

PROSPECTIVE

28 (1) Section 174B (restriction on powers to impose penalties under section 174A) is amended as follows.

(2) In subsection (1)—

- (a) for “174A(1) or (3)” substitute “**174A(1)(a) or (b)**”;
- (b) for “4” substitute “ten”.

(3) In subsection (2), for “the failure or (as the case may be) the obstruction or delay” substitute “the act or omission giving rise to the penalty”.

Commencement Information

I28 Sch. 10 para. 28 not in force at Royal Assent, see **s. 339(1)**

Status: Point in time view as at 24/05/2024. 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 10. (See end of Document for details)

- 29 (1) Section 174D (penalties) is amended as follows.
- (2) In the heading, at the end insert “: amount”.
- (3) In subsection (1)—
- (a) for “(3)” substitute “(1A)”;
 - (b) for “the CMA” insert “the relevant authority”.
- (4) In subsection (2), in the words before paragraph (a), for “174A(1)” substitute “174A(1)(a)”.
- (5) In subsection (3), for “section 174A(3)” substitute “any of section 174A(1)(b), (c) or (1A)”.
- (6) In subsection (4)—
- (a) for the words before paragraph (a) substitute “A penalty imposed under section 174A(1) or (1A) on a person who does not own or control an enterprise must not—”;
 - (b) in paragraph (a), for “such amount as the Secretary of State may by order specify” substitute “£30,000”;
 - (c) in paragraph (b), for “such amount per day as the Secretary of State may so specify” substitute “£15,000 per day”;
 - (d) in paragraph (c) omit “as the Secretary of State may so specify”.
- (7) After subsection (4) insert—
- “(4A) A penalty imposed under section 174A(1) or (1A) on any other person must not—
- (a) in the case of a fixed amount, exceed 1% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person;
 - (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;
 - (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.”
- (8) Omit subsections (5) and (6).
- (9) Before subsection (7) insert—
- “(6A) The Secretary of State may by regulations amend subsection (4)(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.”
- (10) In subsection (7), in the words before paragraph (a), for “an order under subsection (4) or (5)” substitute “regulations under [subsection \(6A\)](#)”.
- (11) In subsection (8), in paragraph (a)—
- (a) for “notice under section 112” substitute “provisional penalty notice under section 112(A1)”;
 - (b) for “subsection (10)” substitute “section 174A(10)”.

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Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Schedule 10. (See end of Document for details)

(12) Omit subsection (10).

(13) After subsection (10) insert—

“(11) 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.

(12) Regulations under [subsection \(11\)\(b\)](#) 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.

(13) Regulations under [subsection \(11\)](#) 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 \(12\)](#)).

Commencement Information

I29 Sch. 10 para. 29 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

30 (1) Section 174E (statement of policy on penalties) is amended as follows.

(2) For subsection (1) substitute—

“(1) The CMA must prepare and publish a statement of policy in relation to—

- (a) the imposition of penalties under section 174A, and
- (b) the enforcement of notices under section 174.”

(3) In subsection (2), for “(3)” substitute “(1A)”.

(4) In subsection (4), for “such” substitute “the Secretary of State and such other”.

(5) After subsection (4) insert—

“(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

I30 Sch. 10 para. 30 not in force at Royal Assent, see [s. 339\(1\)](#)

Status: Point in time view as at 24/05/2024. 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 10. (See end of Document for details)

PROSPECTIVE

- 31 In section 179 (review of decisions under Part 4), in subsection (2), in paragraph (a), for “(3)” substitute “(1A)”.

Commencement Information

I31 Sch. 10 para. 31 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 32 (1) Section 180 (offences) is amended as follows.
- (2) In subsection (1), after “Sections” insert “**116A** (intentional destruction etc of documents)”.
- (3) For subsection (2) substitute—
- “(1A) For the purposes of subsection (1), section **116A** has effect as if—
- (a) references to section 109 were references to section 174;
 - (b) the reference to section 110(1) or (1A) were a reference to section 174A(1) or (1A).
- (1B) For the purposes of subsection (1), section 117 has effect as if—
- (a) references to “the appropriate authority” were to “the relevant authority” within the meaning of section 174A;
 - (b) the reference to section 110(1) or (1A) were a reference to section 174A(1) or (1A).”

Commencement Information

I32 Sch. 10 para. 32 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

- 33 In section 183 (interpretation: Part 4), in subsection (1), at the appropriate place insert—
- ““enterprise” means the activities, or part of the activities, of a business”.

Commencement Information

I33 Sch. 10 para. 33 not in force at Royal Assent, see [s. 339\(1\)](#)

Status: Point in time view as at 24/05/2024. 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 10. (See end of Document for details)

PROSPECTIVE

34	In section 184 (index of defined expressions: Part 4), at the appropriate place in the table insert—	
	“Enterprise	Section 183(1)”.

Commencement Information

I34 Sch. 10 para. 34 not in force at Royal Assent, see [s. 339\(1\)](#)

Status:

Point in time view as at 24/05/2024. 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 10.