
Status: 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 1. (See end of Document for details)

SCHEDULES

SCHEDULE 10

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\(1\)](#)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Part 1.