
Changes to legislation: There are currently no known outstanding effects for the Digital Markets, Competition and Consumers Act 2024, Paragraph 6. (See end of Document for details)

SCHEDULES

SCHEDULE 11

CIVIL PENALTIES ETC IN CONNECTION WITH BREACHES OF REMEDIES

PART 1

COMMITMENTS AND DIRECTIONS UNDER PART 1 OF CA 1998 (COMPETITION)

6 After section 35 insert—

“Civil sanctions: breaches of commitments, directions and interim measures

35A Enforcement of powers under sections 31A, 32, 33 and 35: imposition of penalties

- (1) The CMA may, in accordance with [section 35B](#), impose a penalty on a person—
 - (a) from whom the CMA has accepted commitments under section 31A (and who has not been released from those commitments), or
 - (b) to whom the CMA has given a direction under section 32, 33 or 35, where the CMA considers that the person has, without reasonable excuse, failed to adhere to the commitments or comply with the direction.
- (2) 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 35C](#) at the time of the failure to adhere or comply.

35B Penalties under [section 35A](#): amount

- (1) A penalty under [section 35A\(1\)](#) is to be such amount as the CMA considers appropriate.
- (2) The amount 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.
- (3) A penalty imposed under [section 35A\(1\)](#) on a person who is not an undertaking must not—
 - (a) in the case of a fixed amount, exceed £30,000;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed £15,000 per day;

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- (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.
- (4) A penalty imposed under [section 35A\(1\)](#) on a person who is an undertaking must not—
 - (a) in the case of a fixed amount, exceed 5% of the total value 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 total value 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.
- (5) In imposing a penalty by reference to a daily rate—
 - (a) no account is to be taken of any days before the service on the person concerned of the provisional penalty notice under [section 112\(A1\)](#) of the Enterprise Act 2002 (as applied by [subsection \(6\)](#)), and
 - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the day on which the person adheres to the commitments or complies with the direction (as the case may be) referred to in [section 35A\(1\)](#).
- (6) Sections 112 to 115 of the Enterprise Act 2002 apply in relation to a penalty imposed under [section 35A\(1\)](#) 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 35C](#) at the time when the act or omission concerned occurred.”
- (7) 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.
- (8) Before making regulations under [subsection \(7\)](#) the Secretary of State must consult—
 - (a) the CMA, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (9) The Secretary of State may by regulations make provision for determining the turnover and daily turnover of an undertaking for the purposes of [subsection \(4\)](#).
- (10) Regulations under [subsection \(9\)](#) may, in particular, make provision as to—

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- (a) the amounts which are, or which are not, to be treated as comprising 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.
- (11) Regulations under [subsection \(9\)](#) 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 \(10\)](#)).

Statement of policy in relation to functions under sections 31E, 34 and 35A

35C Statement of policy in relation to functions under sections 31E, 34 and 35A

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of functions under sections 31E, 34 and [35A](#).
- (2) The statement must, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under [section 35A\(1\)](#).
- (3) The CMA may revise its statement of policy and, where it does so, it must publish the revised statement.
- (4) The CMA must consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
- (5) If the proposed statement of policy or revision relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (6) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.

Civil sanctions: infringements of the Chapter I or II prohibitions”

Commencement Information

II Sch. 11 para. 6 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

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