

*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 2. (See end of Document for details)

## SCHEDULES

### SCHEDULE 11

#### CIVIL PENALTIES ETC IN CONNECTION WITH BREACHES OF REMEDIES

#### PART 2

#### UNDERTAKINGS AND ORDERS UNDER PART 3 OF EA 2002 (MERGERS)

PROSPECTIVE

7 In Part 3 of EA 2002 (mergers), Chapter 4 (enforcement) is amended as follows.

#### Commencement Information

**I1** Sch. 11 para. 7 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

8 (1) Section 34C (functions to be exercised by CMA groups) is amended as follows.  
(2) In subsection (1)(e), for “94A” substitute “94AA”.  
(3) In subsection (3)(e), for “and 94” substitute “, 94 and 94AA”.

#### Commencement Information

**I2** Sch. 11 para. 8 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

9 (1) Section 89 (subject-matter of undertakings) is amended as follows.  
(2) In the heading, at the start insert “Acceptance and”.  
(3) Before subsection (1) insert—  
“(A1) An appropriate authority may not accept an enforcement undertaking from a person unless it has provided the person with information about the possible consequences of failing to comply with the undertaking.”  
(4) After subsection (2) insert—

*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 2. (See end of Document for details)*

“(3) In this section, “appropriate authority” has the same meaning as in [section 94AA](#).”

**Commencement Information**

**I3** Sch. 11 para. 9 not in force at Royal Assent, see [s. 339\(1\)](#)

PROSPECTIVE

10 In section 94 (rights to enforce undertakings and orders), after subsection (9) insert—

“(10) In deciding whether and, if so, how to proceed under this section, the CMA must have regard to the statement of policy which was most recently published by it under section 94B at the time of the failure to comply with the undertaking or (as the case may be) order.”

**Commencement Information**

**I4** Sch. 11 para. 10 not in force at Royal Assent, see [s. 339\(1\)](#)

11 For section 94A substitute—

**“94AA Enforcement of undertakings and orders: imposition of penalties**

- (1) The appropriate authority may, in accordance with [section 94AB](#), impose a penalty on a person—
  - (a) from whom the authority has accepted an enforcement undertaking, or
  - (b) to whom an enforcement order is addressed,
 where the authority considers that the person has, without reasonable excuse, failed to comply with the undertaking or order.
- (2) In this section and in [section 94AB](#), “the appropriate authority” means—
  - (a) in relation to an enforcement undertaking or enforcement order made by the Secretary of State under Schedule 7, the Secretary of State;
  - (b) in relation to any other enforcement undertaking or enforcement order, the CMA.
- (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 94B at the time of the failure to comply.

**94AB Penalties under [section 94AA](#): amount**

- (1) A penalty under [section 94AA\(1\)](#) is to be such amount as the appropriate authority considers appropriate.
- (2) The amount must be—

---

*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 2. (See end of Document for details)

---

- (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 94AA\(1\)](#) on a person who does not own or control an enterprise 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;
  - (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 94AA\(1\)](#) on any other person must not—
- (a) in the case of a fixed amount, exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed;
  - (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 on whom it is imposed;
  - (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\(A1\)](#) (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 complies with the enforcement undertaking or enforcement order.
- (6) Sections 112 to 115 apply in relation to a penalty imposed under [section 94AA\(1\)](#) 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 appropriate authority within the meaning of this section (see [section 94AA\(2\)](#));
  - (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 94B](#) 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.

*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 2. (See end of Document for details)

- (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, 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**

**I5** Sch. 11 para. 11 in force at Royal Assent for specified purposes, see [s. 339\(2\)\(c\)](#)

PROSPECTIVE

- 12 (1) Section 94B (statement of policy in relation to powers under sections 94 and 94A) is amended as follows.
- (2) In the heading—
- (a) for “powers” substitute “functions”.
  - (b) for “94A” substitute “[94AA](#)”.
- (3) In subsection (1)—
- (a) in the words before paragraph (a), for “use of its powers” substitute “exercise of functions”;
  - (b) in paragraph (a) omit “, insofar as they relate to interim measures”;
  - (c) in paragraph (b), for “94A” substitute “[94AA](#)”.
- (4) In subsection (2), for “94A” substitute “[94AA](#)”.
- (5) Omit subsection (6).

**Commencement Information**

**I6** Sch. 11 para. 12 not in force at Royal Assent, see [s. 339\(1\)](#)

---

*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 2. (See end of Document for details)

---

PROSPECTIVE

13 In section 120 (review of decisions under Part 3), in subsection (2), in paragraph (a), for “94A(1)” substitute “94AA(1)”.

---

**Commencement Information**

**I7** Sch. 11 para. 13 not in force at Royal Assent, see [s. 339\(1\)](#)

**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 2.