

SCHEDULES

SCHEDULE 11

CIVIL PENALTIES ETC IN CONNECTION WITH BREACHES OF REMEDIES

PART 3

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

14 In Part 4 of EA 2002 (market studies and market investigations), Chapter 3 (enforcement) is amended as follows.

15 (1) Section 133A (functions to be exercised by CMA groups) is amended as follows.

(2) In subsection (1)(i), for “section 167” substitute “sections 167 and 167A”.

(3) In subsection (2)(e), for “section 167” substitute “sections 167 and 167A”.

16 After section 161 insert—

“161A Acceptance of enforcement undertakings: Part 4

(1) The relevant 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.

(2) In [subsection \(1\)](#), “the relevant authority” means—

(a) in the case of a restricted PI reference or a full PI reference, the Secretary of State;

(b) in any other case, the CMA.”

17 In section 167 (rights to enforce undertakings and orders under this Part), 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 167C](#) at the time of the failure to comply with the undertaking or (as the case may be) order.”

18 After section 167 insert—

“167A Enforcement of undertakings and orders: imposition of penalties

(1) The relevant authority may, in accordance with [section 167B](#), 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 167B, “the relevant authority” means—
 - (a) in the case of a restricted PI reference or a full PI reference, the Secretary of State;
 - (b) in any other case, 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 167C at the time of the failure to comply.

167B Penalties under section 167A: amount

- (1) A penalty under section 167A(1) is to be such amount as the relevant authority 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 167A(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 167A(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.

Status: This is the original version (as it was originally enacted).

- (6) Sections 112 to 115 apply in relation to a penalty imposed under [section 167A\(1\)](#) 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 relevant authority within the meaning of this section (see [section 167A\(2\)](#));
 - (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 167C](#) 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, 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 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 \(10\)](#)).

167C Statement of policy in relation to functions under sections 167 and 167A

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of functions under sections 167 and [167A](#).
- (2) The CMA must, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under [section 167A](#).

Status: This is the original version (as it was originally enacted).

- (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) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.”

19 In section 179 (review of decisions under Part 4), in subsection (2), in paragraph (a), after “section” insert “[167A\(1\)](#) or”.