

*Status: 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 3. (See end of Document for details)

## SCHEDULES

PROSPECTIVE

### SCHEDULE 3

Section 125

#### POWER OF COMPETITION APPEAL TRIBUNAL TO GRANT DECLARATORY RELIEF

- 1 Chapter 4 of Part 1 of CA 1998 (appeals before the Competition Appeal Tribunal etc) is amended as follows.

##### Commencement Information

- I1** Sch. 3 para. 1 not in force at Royal Assent, see [s. 339\(1\)](#)

- 2 In the italic heading before section 47A, after “damage” insert “, or for declaratory relief”.

##### Commencement Information

- I2** Sch. 3 para. 2 not in force at Royal Assent, see [s. 339\(1\)](#)

- 3 In section 47A (proceedings before the Tribunal: claims for damages etc), after subsection (3) insert—

“(3A) This section also applies to a claim for a declaration or, in relation to Scotland, for a declarator which a person may make in respect of an infringement decision or an alleged infringement of the Chapter 1 prohibition or the Chapter 2 prohibition.”

##### Commencement Information

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

- 4 After section 47D insert—

##### “47DA Proceedings under section 47A or collective proceedings: declaratory relief

- (1) A declaration granted by the Tribunal in proceedings under section 47A or collective proceedings has the same effect as a declaration granted by the High Court.
- (2) A declarator granted by the Tribunal in proceedings under section 47A or collective proceedings has the same effect as a declarator granted by the Court of Session.

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- (3) In deciding whether to grant a declaration in proceedings under section 47A or collective proceedings, the Tribunal must apply the principles that the High Court would apply in deciding whether to grant a declaration.
- (4) In deciding whether to grant a declarator in proceedings under section 47A or collective proceedings, the Tribunal must apply the principles that the Court of Session would apply in deciding whether to grant a declarator.
- (5) The Tribunal may grant a declaration or declarator in proceedings under section 47A or collective proceedings whether or not any other remedy is claimed.”

**Commencement Information**

**I4** Sch. 3 para. 4 not in force at Royal Assent, see [s. 339\(1\)](#)

- 5 In the italic heading before section 47F, after “damage” insert “, or for declaratory relief”.

**Commencement Information**

**I5** Sch. 3 para. 5 not in force at Royal Assent, see [s. 339\(1\)](#)

- 6 (1) Section 47F (further provision about claims in respect of loss or damage before a court or the Tribunal) is amended as follows.
- (2) In the heading, after “damage” insert “, or for declaratory relief”.
  - (3) In the text, after “damage” insert “, or for declarations or declarators”.

**Commencement Information**

**I6** Sch. 3 para. 6 not in force at Royal Assent, see [s. 339\(1\)](#)

- 7 (1) In section 49 (further appeals from the Tribunal), subsection (1A) is amended as follows.
- (2) Omit the “or” at the end of paragraph (a).
  - (3) After paragraph (b) insert “, or
    - (c) as to the grant of a declaration or a declarator.”

**Commencement Information**

**I7** Sch. 3 para. 7 not in force at Royal Assent, see [s. 339\(1\)](#)

- 8 (1) Schedule 8A (further provision about claims in respect of loss or damage before a court or the Tribunal) is amended as follows.
- (2) In the heading, after “damage” insert “, or for declaratory relief”.
  - (3) In paragraph 2 (competition law etc), for sub-paragraph (2) substitute—
 

“(2) “Competition claim” means—

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- (a) a claim in respect of loss or damage arising from an infringement of competition law (whatever the legal basis of the claim) which is made by or on behalf of—
    - (i) the person who suffered the loss or damage, or
    - (ii) a person who has acquired that person’s right to make the claim (whether by operation of law or otherwise), or
  - (b) a claim for a declaration or a declarator in respect of an infringement of competition law.”
- (4) In paragraph 9 (burden of proof where an overcharge is passed on to an indirect purchaser), for sub-paragraph (1) substitute—
- “(1) Sub-paragraph (2) applies where there is an overcharge as a result of an infringement of competition law and—
- (a) a competition claim within paragraph 2(2)(a) is made in respect of loss or damage which—
    - (i) arises, directly or indirectly, from the overcharge, and
    - (ii) was suffered by a person who acquired a product or service indirectly from the infringer (“the injured person”), or
  - (b) a competition claim within paragraph 2(2)(b) is made in respect of the overcharge.”
- (5) In paragraph 10 (burden of proof where an underpayment is passed on to an indirect provider), for sub-paragraph (1) substitute—
- “(1) Sub-paragraph (2) applies where there is an underpayment as a result of an infringement of competition law and—
- (a) a competition claim within paragraph 2(2)(a) is made in respect of loss or damage which—
    - (i) arises, directly or indirectly, from the underpayment, and
    - (ii) was suffered by a person who provided a product or service indirectly to the infringer (“the injured person”), or
  - (b) a competition claim within paragraph 2(2)(b) is made in respect of the underpayment.”
- (6) In paragraph 11 (burden of proof where an overcharge or underpayment is passed on by the claimant)—
- (a) in sub-paragraph (1), in paragraph (b) omit “loss or damage which arises, directly or indirectly, from”;
  - (b) in sub-paragraph (3), for “the person who suffered the loss or damage” substitute “a person who suffered loss or damage arising directly or indirectly from the overcharge or underpayment”.
- (7) In paragraph 17 (time limits for bringing competition proceedings), in sub-paragraph (2), in paragraph (b), for “the”, in the first place it occurs, substitute “any”.
- (8) In paragraph 19 (beginning of limitation or prescriptive period), after sub-paragraph (6) insert—
- “(6A) This paragraph applies in respect of a competition claim within paragraph 2(2)(b) as if—

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- (a) in sub-paragraph (2), paragraph (c) (but not the “, and” at the end of it) were omitted;
  - (b) in sub-paragraph (3), paragraph (b) (and the “and” before it) were omitted;
  - (c) sub-paragraph (4) were omitted.”
- (9) In paragraph 21 (suspension during investigation by competition authority), in sub-paragraph (1) omit “in respect of loss or damage”.
- (10) In paragraph 24 (suspension of prescriptive period during period of disability: Scotland)—
- (a) in sub-paragraphs (1) and (2) for “injured person” substitute “relevant person”;
  - (b) for sub-paragraph (4) substitute—
    - “(4) In this paragraph, “relevant person” means—
    - (a) in relation to a competition claim within paragraph 2(2)(a), a person who suffered the loss or damages that is the subject of the claim;
    - (b) in relation to a competition claim within paragraph 2(2)(b), the pursuer.”
- (11) In paragraph 42 (application of Schedule 8A), in sub-paragraph (1), for the words from “the claims and proceedings relate” to the end substitute “—
- (a) in respect of competition claims within paragraph 2(2)(a), the claim and proceedings relate to loss or damage suffered on or after 8 March 2017 as a result of an infringement of competition law that takes place on or after that date;
  - (b) in respect of competition claims within paragraph 2(2)(b), the claim and proceedings relate to an infringement of competition law that takes place on or after 8 March 2017.”
- (12) In paragraph 43 (application of Schedule 8A), in the words before paragraph (a), for “the relevant day” substitute “8 March 2017”.
- (13) Omit paragraph 44 (definition of “relevant day”).

#### **Commencement Information**

**18** Sch. 3 para. 8 not in force at Royal Assent, see [s. 339\(1\)](#)

- 9 In Schedule 4 to EA 2002 (Competition Appeal Tribunal: procedure), after paragraph 21A insert—

#### *“Declarations and declarators*

21B Tribunal rules may make provision in relation to the grant of declarations or declarators (including interim declarations or interim declarators) in proceedings under section 47A or 47B of the 1998 Act.”

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#### Commencement Information

**19** Sch. 3 para. 9 not in force at Royal Assent, see [s. 339\(1\)](#)

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