

EXPLANATORY MEMORANDUM TO
THE UNITED KINGDOM INTERNAL MARKET ACT (MAXIMUM PENALTY)
REGULATIONS 2021

2021 No. 1056

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy, and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The UK Internal Market Act 2020 (“the Act”) aims to preserve the UK's internal market following the UK’s exit from the European Union. The Act introduces an Office for the Internal Market (OIM) which will sit within the Competition and Markets Authority (CMA).

2.2 The Act gives the CMA the powers to issue a notice requiring any person to provide information or documents to assist the OIM in carrying out its functions of reporting, monitoring, and advising on the effective operation of the UK Internal Market under Part 4 of the Act. The Act also gives the CMA the power to impose financial penalties where an information notice is not complied with up to a maximum amount set by the Secretary of State in secondary legislation. The CMA is also empowered to impose a financial penalty where a person intentionally obstructs or delays a person exercising their power to make copies of a document under s41(7) of the Act.

2.3 This instrument specifies the maximum penalty rates that can be imposed by the CMA as provided for by section 43. These rates have been set following consultation with the CMA, the Devolved Administrations, and other relevant persons, as required by the Act.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments OR the Select Committee on Statutory Instruments OR the Sifting Committees]

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Act was passed in 2020 to allow people and businesses to continue to work and to trade goods and services freely across all parts of the UK after leaving the European Union (EU).
- 6.2 Under Part 4 of the Act the CMA is empowered to provide independent advice on, and monitoring of, the operation of the UK internal market. Those powers include, under section 42 of the Act, the power to issue financial penalties.
- 6.3 Section 42(1) provides that the CMA may impose a penalty where it considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 41. Section 42(2) provides that the CMA may impose a penalty where it considers that a person has intentionally obstructed or delayed any person in the exercise of the power under section 41(7).
- 6.4 Section 43 of the Act provides that the Secretary of State may make regulations setting the maximum penalty that may be imposed by the CMA using the powers in section 42(1) and (2).
- 6.5 Section 43 requires that any such regulations may not specify:
- (a) in the case of a fixed amount, an amount exceeding £30,000,
 - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000, and
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- Before making regulations under section 43, the Secretary of State must consult the CMA, each other relevant national authority (the Devolved Administrations) and such other persons considered appropriate.
- 6.6 Sections 112 to 115 of the Enterprise Act 2002 apply in relation to a penalty imposed under section 42(1) or (2) of the Act. This makes provision for appeals to the Competition Appeal Tribunal in respect of a penalty decision.

7. Policy background

What is being done and why?

- 7.1 The Act establishes the Office for the Internal Market (OIM) within the Competition and Markets Authority (CMA). The purpose of the OIM is to monitor, report, and advise on the effective operation of the UK internal market.
- 7.2 The UK government, devolved administrations and other interested parties will be able to draw upon the OIM's independent, expert reports on the potential or actual economic impact of proposals and regulations on the operation of the UK internal market. The OIM will arrange for its reports to be laid before both houses of the UK Parliament and the devolved legislatures.
- 7.3 The CMA has information-gathering powers and further powers to enforce such requests for information, including via penalties. This ensures that the OIM has access to credible and accurate information for the purposes of carrying out these functions. This statutory instrument sets out the maximum penalties that can be issued for failure to comply with an information request from the OIM or where the CMA considers

that a person has intentionally obstructed or delayed any person in the exercise of the power under s41(7) of the Act.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 As noted, the OIM was introduced under the Act alongside a number of measures designed to create a coherent approach to market access and support for the UK internal market following the UK's exit from the European Union. As a result, there were no existing powers for the CMA to impose penalties for non-compliance with an information notice issued by the OIM or for the intentional obstruction or delay of the copying of relevant documentation under s41(7) of the Act prior to the laying of this instrument.

Why is it being changed?

- 7.5 This instrument enables the CMA to impose a penalty for non-compliance with an information notice and the intentional obstruction or delay of the copying of relevant documentation under Section 41(7) of the Act. This power will help ensure the CMA is able to access accurate and up-to-date information for the purposes of carrying out its OIM advisory, monitoring and reporting functions as set out in Part 4 of the Act.

What will it now do?

- 7.6 The CMA will be able to impose penalties for non-compliance with an information notice issued by the OIM and for the intentional obstruction or delay of persons making copies of relevant information. The maximum rates specified in this instrument are:
- £30,000 for a fixed amount (for either a penalty for a breach of a requirement of a notice under section 41 of the Act, or for intentionally obstructing or delaying a person copying documents provided in accordance with an information notice (section 41(7) of the Act))
 - £15,000 per day for an amount calculated by reference to a daily rate; and,
 - a combination of a fixed amount (£30,000) and an amount calculated by reference to a daily rate amount (£15,000 per day).
- 7.7 As set out above, the CMA may impose different types of penalty for failure to comply with an OIM information notice.
- 7.8 The CMA has published a Statement of Policy in relation to information-gathering enforcement setting out its intention to ensure its approach is proportionate and pragmatic wherever possible.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not amend another instrument. No consolidation applies.

10. Consultation outcome

- 10.1 A consultation seeking views on the maximum penalty rates the CMA can impose for non-compliance with an information notice from the OIM, or where it is believed a person has intentionally obstructed or delayed any person in the exercise of the power to make copies of a document. The consultation took place over an eight-week period between 16 June and 11 August 2021. In line with duties set out in the Act, the Secretary of State consulted the CMA, each of the Devolved Administrations and any other persons considered appropriate through a consultation.
- 10.2 In addition to the CMA and Devolved Administrations, the consultation was open to the wider public which provided an opportunity for businesses, business representative organisations, non-governmental organisations, public and local authorities, academics, consumer groups, trade unions and any other interested party to provide feedback on the proposed maximum rates set out in the consultation. The consultation was launched on gov.uk.
- 10.3 Overall, the consultation received 7 formal responses, from business organisations, individuals, the Welsh Government, and the CMA. As required under the Act, all the Devolved Administrations were formally consulted as statutory consultees, but the Scottish Government and Northern Ireland Executive did not provide written responses. To supplement the formal responses received, BEIS joined and held a series of events and bilateral meetings with over 25 organisations representing a diverse range of UK sectors to raise awareness of the consultation – including officials in all Devolved Administrations - to discuss the proposals and answer any questions.
- 10.4 Consultation responses were broadly supportive of the CMA having the ability to impose penalties in the circumstances outlined and with the maximum penalty amounts proposed.
- 10.5 Some respondents highlighted the importance of the CMA taking a proportionate and flexible approach to imposing penalties, taking particular account of the size and resources of the relevant subject and the advisory nature of the OIM's functions.
- 10.6 After careful consideration of the consultation responses, the Government has decided that the maximum penalties should be as proposed in the consultation – that is £30,000 for a fixed penalty, £15,000 for the daily rate and £30,000 and £15,000 for a combination of these rates together. The CMA has set out its commitment to a proportionate and flexible approach to the exercise of its information gathering powers in its Statement of Policy which is available on www.gov.uk
- 10.7 The Government response to the consultation is available on www.gov.uk.

11. Guidance

11.1 Guidance is not required for this instrument. The CMA has set out its approach to the exercise of its information gathering powers in its Statement of Policy which is available www.gov.uk

12. Impact

- 12.1 Business, charities and/ or voluntary bodies are required to produce information requested by the OIM for the purposes of carrying out its functions. Where such a request is not complied with penalties may be issued.
- 12.2 Public sector bodies, such as local authorities, may similarly be required to produce information following a request from the OIM.
- 12.3 An Impact Assessment has not been prepared for this instrument as the equivalent annual net cost to business is expected to be minimal.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on businesses including small businesses (employing up to 50 people), the OIM Statement of Policy sets out the CMA commitment to proportionality and the need to have regard to the subject's size and financial position when deciding on whether a penalty is appropriate.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause; however, section 44 of the Act requires the Secretary of State to carry out a review and report on the performance of the OIM. This review will assess the way in which the Part 4 functions have been carried out by the CMA. The permitted period for the review is the period beginning with the third anniversary of the day on which section 32 comes into force (or first comes into force to any extent) and ending with the fifth anniversary.

15. Contact

- 15.1 The UK Internal Market team at the department of Business, Energy and Industrial Strategy can be contacted at: ukinternalmarket@beis.gov.uk with any queries regarding the instrument.
- 15.2 Greg Dyke, Deputy Director for the UK Internal Market at the Department of Business, Energy, and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Paul Scully at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.