

Digital Markets, Competition and Consumers Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business and Trade and the Department for Science, Innovation and Technology, are published separately as Bill 294—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Kemi Badenoch has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Digital Markets, Competition and Consumers Bill are compatible with the Convention rights.

Digital Markets, Competition and Consumers Bill

[AS INTRODUCED]

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[AS INTRODUCED]

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TO

Provide for the regulation of competition in digital markets; to amend the Competition Act 1998 and the Enterprise Act 2002 and to make other provision about competition law; to make provision relating to the protection of consumer rights and to confer further such rights; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

DIGITAL MARKETS

CHAPTER 1

OVERVIEW

- | | | |
|----------|---|----------|
| 1 | Overview | 5 |
| (1) | This Part—
(a) confers functions on the CMA in relation to the regulation of competition in digital markets, and
(b) makes related provision. | |
| (2) | Chapter 2 makes provision about the designation of undertakings as having strategic market status in respect of a digital activity. | 10 |
| (3) | Chapter 3 provides for the CMA to be able to impose conduct requirements on a designated undertaking. | |
| (4) | Chapter 4 provides for the CMA to take steps to promote competition where it considers that activities of a designated undertaking are having an adverse effect on competition. | 15 |
| (5) | Chapter 5 makes provision about a duty to report certain possible mergers involving a designated undertaking. | |

- (6) Chapter 6 makes provision about investigatory powers and compliance reports in relation to a designated undertaking.
- (7) Chapter 7 makes provision about enforcement and appeals in relation to functions of the CMA under this Part.
- (8) Chapter 8 makes provision about administration and other matters in relation to functions of the CMA under this Part. 5

CHAPTER 2

STRATEGIC MARKET STATUS

Power to designate undertaking as having SMS

- 2 Designation of undertaking** 10
 - (1) The CMA may designate an undertaking as having strategic market status (“SMS”) in respect of a digital activity carried out by the undertaking where the CMA considers that—
 - (a) the digital activity is linked to the United Kingdom (see section 4), and 15
 - (b) the undertaking meets the SMS conditions in respect of the digital activity.
 - (2) The SMS conditions are that the undertaking has—
 - (a) substantial and entrenched market power (see section 5), and
 - (b) a position of strategic significance (see section 6), 20
 in respect of the digital activity.
 - (3) Subsection (1) is subject to section 7 (“the turnover condition”).
 - (4) The CMA may only designate an undertaking as having SMS in respect of a digital activity after carrying out an SMS investigation in accordance with this Chapter. 25
- 3 Digital activities**
 - (1) For the purposes of this Part, the following are “digital activities”—
 - (a) the provision of a service by means of the internet, whether for consideration or otherwise;
 - (b) the provision of one or more pieces of digital content, whether for consideration or otherwise; 30
 - (c) any other activity carried out for the purposes of an activity within paragraph (a) or (b).
 - (2) For the purposes of this section, a service is provided by means of the internet even where it is provided by means of a combination of—
 - (a) the internet, and 35

- (b) an electronic communications service (within the meaning given by section 32(2) of the Communications Act 2003).
- (3) The CMA may treat two or more activities within subsection (1) that are carried out by a single undertaking as a single digital activity where—
 - (a) the activities have substantially the same or similar purposes, or 5
 - (b) the activities can be carried out in combination with each other to fulfil a specific purpose.
- (4) In any notice or other document that the CMA is required to give or publish under or by virtue of this Part, the CMA may describe a digital activity by reference to the nature of the activity, brand names or both. 10

4 Link to the United Kingdom

A digital activity is linked to the United Kingdom for the purposes of section 2(1)(a) if—

- (a) the digital activity has a significant number of UK users,
- (b) the undertaking that carries out the digital activity carries on business in the United Kingdom in relation to the digital activity, or 15
- (c) the digital activity or the way in which the undertaking carries on the digital activity is likely to have an immediate, substantial and foreseeable effect on trade in the United Kingdom.

5 Substantial and entrenched market power 20

In order to assess whether an undertaking has substantial and entrenched market power in respect of a digital activity for the purposes of section 2(2)(a), the CMA must carry out a forward-looking assessment of a period of at least 5 years, taking into account developments that—

- (a) would be expected or foreseeable if the CMA did not designate the undertaking as having SMS in respect of the digital activity, and 25
- (b) may affect the undertaking’s conduct in carrying out the digital activity.

6 Position of strategic significance

- (1) An undertaking has a position of strategic significance in respect of a digital activity for the purposes of section 2(2)(b) where one or more of the following conditions is met— 30
 - (a) the undertaking has achieved a position of significant size or scale in respect of the digital activity;
 - (b) a significant number of other undertakings use the digital activity as carried out by the undertaking in carrying on their business; 35
 - (c) the undertaking’s position in respect of the digital activity would allow it to extend its market power to a range of other activities;
 - (d) the undertaking’s position in respect of the digital activity allows it to determine or substantially influence the ways in which other 40

undertakings conduct themselves, in respect of the digital activity or otherwise.

- (2) The Secretary of State may by regulations amend this section so as to vary the conditions in subsection (1).
- (3) Regulations under subsection (2) are subject to the affirmative procedure. 5

7 The turnover condition

- (1) The CMA may not designate an undertaking as having SMS in respect of a digital activity unless the turnover condition is met in relation to the undertaking.
- (2) The turnover condition is met in relation to an undertaking if the CMA estimates that— 10
- (a) the total value of the global turnover of an undertaking or, where the undertaking is part of a group, the global turnover of that group in the relevant period exceeds £25 billion, or
- (b) the total value of the UK turnover of an undertaking or, where the undertaking is part of a group, the UK turnover of that group in the relevant period exceeds £1 billion. 15
- (3) The Secretary of State may by regulations amend either of the sums mentioned in subsection (2).
- (4) Regulations under subsection (3) are subject to the affirmative procedure. 20
- (5) The CMA must—
- (a) keep under review the sums mentioned in subsection (2), and
- (b) from time to time advise the Secretary of State as to whether the sums are still appropriate.
- (6) In this section— 25
- (a) the “relevant period” means—
- (i) the most recent period of 12 months (“period A”) in respect of which the CMA considers that it is able to make an estimate of the total value of the relevant turnover of the undertaking or group, or 30
- (ii) if the CMA estimates that the relevant turnover of the undertaking or group in the period of 12 months ending immediately before period A was higher than the relevant turnover of the undertaking or group in period A, that earlier period of 12 months; 35
- (b) the “relevant turnover” of the undertaking or group is the UK turnover or, as the case may be, global turnover of the undertaking or group.

8 Turnover of an undertaking

- (1) This section applies for the purposes of the turnover condition.

- (2) The total value of the global turnover of an undertaking or group in the relevant period (as defined in section 7(6)) is, subject to regulations under subsection (4), the total value of the turnover of the undertaking or group arising in connection with any of its activities.
- (3) The total value of the UK turnover of an undertaking or group in the relevant period is, subject to regulations under subsection (4), the total value of the turnover of the undertaking or group –
 - (a) arising in connection with any of its activities, and
 - (b) relating to UK users or UK customers.
- (4) The Secretary of State may by regulations make provision about how the total value of the global turnover or UK turnover of an undertaking or group in a period is to be estimated for the purposes of the turnover condition.
- (5) Regulations under subsection (4) may (among other things) –
 - (a) make provision about amounts which are, or are not, to be regarded as comprising the turnover of an undertaking or group;
 - (b) confer on the CMA the power to determine matters specified in the regulations (including the matter mentioned in paragraph (a)).
- (6) Regulations under subsection (4) are subject to the negative procedure.

Procedure

9 Initial SMS investigations 20

- (1) The CMA may begin an initial SMS investigation where it has reasonable grounds to consider that it may be able to designate an undertaking as having SMS in respect of a digital activity in accordance with section 2.
- (2) An “initial SMS investigation” is an investigation into whether to designate an undertaking as having SMS in respect of a digital activity where the undertaking is not already designated in respect of that activity (subject to section 10(4)). 25
- (3) The CMA may begin an initial SMS investigation into whether to designate an undertaking as having SMS in respect of a digital activity even if it has previously made a decision not to designate the undertaking as having SMS in respect of that activity. 30

10 Further SMS investigations

- (1) The CMA may begin a further SMS investigation in relation to the designation of a designated undertaking in respect of a relevant digital activity at any time during the designation period (see section 18) relating to that designation. 35
- (2) The CMA must begin a further SMS investigation in relation to the designation of a designated undertaking in respect of a relevant digital activity not later than 9 months before the end of the designation period relating to that

designation, if it is not already carrying one out at that time under subsection (1).

- (3) A “further SMS investigation” is an investigation into whether—
- (a) to revoke a designated undertaking’s designation in respect of the relevant digital activity or to designate the undertaking again in respect of that activity, and
 - (b) to make provision under section 17 (existing obligations).
- (4) A further SMS investigation may also include an investigation into whether to designate the designated undertaking in respect of a digital activity that the CMA considers to be similar or connected to the relevant digital activity (whether instead of, or in addition to, the relevant digital activity).

11 Procedure relating to SMS investigations

- (1) When the CMA begins an SMS investigation it must give the undertaking to which the investigation relates a notice (an “SMS investigation notice”).
- (2) The SMS investigation notice must state—
- (a) in the case of an initial SMS investigation—
 - (i) the reasonable grounds mentioned in section 9(1);
 - (ii) that the CMA may close the investigation in accordance with section 12;
 - (b) the purpose and scope of the SMS investigation;
 - (c) the period by the end of which the CMA must give the undertaking a notice setting out its decisions as a result of the investigation (see section 14(2));
 - (d) the circumstances in which that period may be extended (see section 102).
- (3) The statement of the purpose and scope of the investigation must include a description of the undertaking and digital activities to which the investigation relates.
- (4) The CMA must give the undertaking one or more revised versions of the SMS investigation notice if it changes its view of the purpose and scope of the investigation.
- (5) As soon as reasonably practicable after giving an SMS investigation notice or a revised version of an SMS investigation notice, the CMA must—
- (a) publish a statement summarising the contents of the notice, and
 - (b) give a copy of the statement to the FCA, OFCOM, the Information Commissioner, the Bank of England and the PRA.

12 Closing an initial SMS investigation without a decision

- (1) The CMA may close an initial SMS investigation at any time before it has reached a final view on the matters mentioned in paragraphs (a) and (b) of section 2(1).
- (2) When the CMA decides to close an initial SMS investigation, the CMA must give the undertaking to which the investigation related a notice to that effect. 5
- (3) The notice must include the CMA’s reasons for closing the investigation.
- (4) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must publish a statement summarising the contents of the notice.

13 Consultation on proposed decision

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- (1) The CMA must—
 - (a) carry out a public consultation on any decision that it is considering making as a result of an SMS investigation (see section 14(1)), and
 - (b) bring the public consultation to the attention of such persons as it considers appropriate. 15
- (2) Consultation under subsection (1) may be carried out at the same time as consultation under section 24(1) (consultation on proposed conduct requirement).

14 Outcome of SMS investigations

- (1) The CMA must—
 - (a) in the case of an initial SMS investigation which it does not close under section 12, decide whether to designate the undertaking to which the investigation relates as having SMS in respect of a digital activity to which the investigation relates; 20
 - (b) in the case of a further SMS investigation, make a decision on the matters mentioned in section 10(3) and, where relevant, section 10(4). 25
- (2) The CMA must give the undertaking a notice (an “SMS decision notice”) setting out its decisions under subsection (1) on or before the last day of the period (“the SMS investigation period”) of 9 months beginning with the day on which the SMS investigation notice is given. 30
- (3) The giving of a revised version of an SMS investigation notice under section 11(4) does not change the day on which the SMS investigation period begins.
- (4) Sections 15 and 16 make provision about the content of an SMS decision notice.
- (5) As soon as reasonably practicable after giving an SMS decision notice, the CMA must publish a statement summarising the contents of the notice. 35

- (6) If the CMA does not give an SMS decision notice on or before the last day of the SMS investigation period, the CMA and the undertaking to which the investigation related are to be treated as if—
- (a) in the case of an initial SMS investigation, the CMA had given the undertaking an SMS decision notice stating that it had decided not to designate the undertaking in respect of any digital activity to which the investigation related, and 5
 - (b) in the case of a further SMS investigation, the CMA had given an SMS decision notice stating that it had decided to revoke the designated undertaking’s designation in respect of the relevant digital activity with effect from the end of the SMS investigation period. 10

15 Notice requirements: decisions to designate

- (1) This section applies where the CMA decides to designate an undertaking as having SMS in respect of a digital activity (whether or not that undertaking is already a designated undertaking). 15
- (2) The SMS decision notice must include—
- (a) a description of the designated undertaking,
 - (b) a description of the digital activity with respect to which the designation has effect,
 - (c) any provision that the CMA has decided to make in reliance on section 17 (existing obligations), 20
 - (d) the CMA’s reasons for its decisions under section 14(1),
 - (e) a statement of the period (the “designation period”) for which the designation has effect (see section 18),
 - (f) a statement of the circumstances in which the designation period may be extended (see section 102), and 25
 - (g) a statement of the circumstances in which the designation may be revoked before the end of the designation period (see sections 10 and 14(1)(b)).
- (3) The CMA may give one or more revised versions of an SMS decision notice if it changes its view of— 30
- (a) the undertaking, or
 - (b) the digital activity,
- provided that any new description of the undertaking or digital activity, as the case may be, is substantially the same as the original description. 35
- (4) The giving of a revised SMS decision notice providing for the designation of an undertaking does not change the day on which the designation period in relation to that designation begins.
- (5) As soon as reasonably practicable after giving a revised SMS decision notice, the CMA must publish a statement summarising the contents of the revised notice. 40

16 Notice requirements: decisions to revoke a designation

- (1) This section applies where the CMA decides, as a result of a further SMS investigation, to revoke the existing designation of a designated undertaking in respect of a digital activity without making a further designation in respect of that digital activity under section 10(3). 5
- (2) The SMS decision notice must provide for the revocation of the existing designation—
 - (a) to have effect at the end of the day on which the notice is given, or
 - (b) to have effect from such earlier time as the CMA may specify in the notice. 10
- (3) The SMS decision notice must include—
 - (a) any provision that the CMA has decided to make in reliance on section 17 (existing obligations);
 - (b) the CMA’s reasons for its decisions under section 14(1).

17 Existing obligations 15

- (1) Where the CMA decides, as a result of a further SMS investigation, to revoke a designated undertaking’s designation in respect of a relevant digital activity, the CMA may make transitional, transitory or saving provision in respect of any existing obligation.
- (2) Provision may be made in reliance on subsection (1) only for the purpose of managing the impact of the revocation—
 - (a) on any person who benefited from the existing obligation, and
 - (b) in a way that appears to the CMA to be fair and reasonable. 20
- (3) Subsection (4) applies where the CMA decides, as a result of a further SMS investigation, to—
 - (a) designate an undertaking again in respect of a relevant digital activity, or
 - (b) designate an undertaking in respect of a different digital activity in reliance on section 10(4). 25
- (4) Where this subsection applies, the CMA may—
 - (a) apply any existing obligation, with or without modification, to the designated undertaking in respect of the new designation;
 - (b) make transitional, transitory or saving provision in respect of any existing obligation. 30
- (5) For the purposes of this section, an “existing obligation” is any—
 - (a) conduct requirement (see section 19),
 - (b) enforcement order (see section 31),
 - (c) final offer order (see section 41), or
 - (d) pro-competition order (see section 44(3)(a)), 35

that is in force in relation to a designated undertaking in respect of the relevant digital activity before the revocation mentioned in subsection (1) or, as the case may be, the designation mentioned in subsection (3).

- (6) Provision made in reliance on this section is to be included in an SMS decision notice. 5

18 Designation period

- (1) Where the CMA decides to designate an undertaking as having SMS in respect of a digital activity, the designation period is 5 years beginning with the day after the day on which the SMS decision notice is given.
- (2) See— 10
- (a) section 102 for circumstances in which the designation period may be extended, and
 - (b) sections 10 and 14(1)(b) for circumstances in which a designation may be revoked before the end of the designation period.

CHAPTER 3

15

CONDUCT REQUIREMENTS

Imposition of conduct requirements

19 Power to impose conduct requirements

- (1) The CMA may impose one or more conduct requirements on a designated undertaking by giving the undertaking a notice containing the information set out in section 21. 20
- (2) The CMA may vary a conduct requirement imposed on a designated undertaking by giving the undertaking a revised version of that notice.
- (3) “Conduct requirements” are requirements as to how the designated undertaking must conduct itself in relation to a relevant digital activity, and references in this Part to imposing conduct requirements include references to varying conduct requirements in reliance on subsection (2). 25
- (4) As soon as reasonably practicable after giving a notice under subsection (1) or (2), the CMA must publish the notice.
- (5) The CMA may only impose a conduct requirement on a designated undertaking if it considers that it would be appropriate to do so for the purposes of one or more of the following objectives— 30
- (a) the fair dealing objective,
 - (b) the open choices objective, and
 - (c) the trust and transparency objective. 35
- (6) The fair dealing objective is that users or potential users of the relevant digital activity are—

- (a) treated fairly, and
 - (b) able to interact, whether directly or indirectly, with the undertaking on reasonable terms.
- (7) The open choices objective is that users or potential users of the relevant digital activity are able to choose freely and easily between the services or digital content provided by the undertaking and services or digital content provided by other undertakings. 5
- (8) The trust and transparency objective is that users or potential users of the relevant digital activity have the information they require to enable them to –
 - (a) understand the services or digital content provided by the undertaking through the relevant digital activity, including the terms on which they are provided, and 10
 - (b) make properly informed decisions about whether and how they interact with the undertaking in respect of the relevant digital activity.
- (9) A conduct requirement must be of a permitted type (see section 20). 15
- (10) A conduct requirement –
 - (a) comes into force at a time determined by the CMA, and
 - (b) ceases to have effect –
 - (i) in accordance with a decision of the CMA to revoke the requirement (see section 22), or 20
 - (ii) subject to provision made in reliance on section 17 (existing obligations), when the designation to which the requirement relates ceases to have effect.

20 Permitted types of conduct requirement

- (1) Conduct requirements are of a permitted type if they are within subsection (2) or (3). 25
- (2) Requirements are within this subsection if they are for the purpose of obliging a designated undertaking to –
 - (a) trade on fair and reasonable terms;
 - (b) have effective processes for handling complaints by and disputes with users or potential users; 30
 - (c) provide clear, relevant, accurate and accessible information about the relevant digital activity to users or potential users;
 - (d) give explanations, and a reasonable period of notice, to users or potential users of the relevant digital activity, before making changes in relation to the relevant digital activity where those changes are likely to have a material impact on the users or potential users; 35
 - (e) present to users or potential users any options or default settings in relation to the relevant digital activity in a way that allows those users or potential users to make informed and effective decisions in their own best interests about those options or settings. 40

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- (3) Requirements are within this subsection if they are for the purpose of preventing a designated undertaking from—
- (a) applying discriminatory terms, conditions or policies to certain users or potential users or certain descriptions of users or potential users;
 - (b) using its position in relation to the relevant digital activity, including its access to data relating to that activity, to treat its own products more favourably than those of other undertakings; 5
 - (c) carrying on activities other than the relevant digital activity in a way that is likely to increase the undertaking’s market power materially, or bolster the strategic significance of its position, in relation to the relevant digital activity; 10
 - (d) requiring or incentivising users or potential users of one of the designated undertaking’s products to use one or more of the undertaking’s other products alongside services or digital content the provision of which is, or is comprised in, the relevant digital activity; 15
 - (e) restricting interoperability between the relevant service or digital content and products offered by other undertakings;
 - (f) restricting whether or how users or potential users can use the relevant digital activity;
 - (g) using data unfairly; 20
 - (h) restricting the ability of users or potential users to use products of other undertakings.
- (4) The Secretary of State may by regulations amend this section so as to modify the permitted types of requirement.
- (5) Regulations under subsection (4) are subject to the affirmative procedure. 25

21 Content of notice imposing a conduct requirement

A notice under section 19(1) or (2) must include, in relation to each conduct requirement, a statement of—

- (a) the conduct requirement and the relevant digital activity to which it relates; 30
- (b) the objective for the purposes of which the CMA considers it is appropriate to impose the conduct requirement (see section 19);
- (c) the permitted type of requirement to which the CMA considers the conduct requirement belongs (see section 20);
- (d) when the conduct requirement comes into force; 35
- (e) the last day of the designation period for the designation to which the conduct requirement relates;
- (f) how the conduct requirement interacts with any other conduct requirement that has been imposed on the undertaking.

22 Revocation of conduct requirements

- (1) The CMA may revoke a conduct requirement with effect from such time as the CMA may determine.
- (2) Where the CMA decides to revoke a conduct requirement it must give the designated undertaking to which the requirement relates a notice specifying when the revocation is to have effect. 5
- (3) As soon as reasonably practicable after giving the notice, the CMA must publish the notice.

23 Transitional provision relating to conduct requirements etc

- (1) A notice under section 19(1) or (2) (content of notice imposing a conduct requirement), or under section 22(2) (revocation of conduct requirements), may include transitional, transitory or saving provision. 10
- (2) The fact that a conduct requirement ceases to have effect does not affect the exercise of any digital markets functions in relation to a breach or possible breach of that requirement. 15

24 Consultation in relation to a conduct requirement

- (1) Before imposing a conduct requirement on a designated undertaking, the CMA must—
 - (a) carry out a public consultation on the conduct requirement which it proposes to impose, and 20
 - (b) bring the public consultation to the attention of such persons as it considers appropriate.
- (2) For the purposes of the consultation, the CMA must publish—
 - (a) the conduct requirement which the CMA proposes to impose, or a description of that requirement, and 25
 - (b) a statement of the permitted type of requirement to which the CMA considers the proposed conduct requirement belongs.
- (3) Consultation under subsection (1) may be carried out at the same time as consultation under section 13 (consultation on proposed designation).
- (4) Before revoking a conduct requirement, the CMA must— 30
 - (a) carry out a public consultation on the proposed revocation, and
 - (b) bring the public consultation to the attention of such persons as it considers appropriate.

25 Duty to keep conduct requirements under review etc

- The CMA must keep under review, in relation to a designated undertaking— 35
- (a) whether to impose, vary or revoke a conduct requirement;

- (b) the extent to which it is complying with each conduct requirement to which it is subject;
- (c) the effectiveness of each conduct requirement to which it is subject;
- (d) whether to take action in accordance with sections 26 to 35 (enforcement of conduct requirements) or Chapter 7 (enforcement and appeals) in respect of any breaches or suspected breaches of a conduct requirement. 5

Enforcement of conduct requirements

26 Power to begin a conduct investigation

- (1) The CMA may begin an investigation (a “conduct investigation”) where it has reasonable grounds to suspect that a designated undertaking has breached a conduct requirement. 10
- (2) A conduct investigation is an investigation into –
 - (a) whether a breach has occurred, and
 - (b) if it has, what action, if any, the CMA should take in relation to the breach. 15
- (3) When the CMA begins a conduct investigation it must give a notice (a “conduct investigation notice”) to the designated undertaking which it suspects has breached a conduct requirement.
- (4) The conduct investigation notice must – 20
 - (a) state the conduct requirement which the CMA suspects has been breached;
 - (b) describe the conduct which the CMA suspects constituted the breach;
 - (c) state the period within which the undertaking may make representations in relation to the conduct investigation (see subsection (5)); 25
 - (d) state the period by the end of which the CMA must give a notice to the undertaking setting out its findings as a result of the conduct investigation (see section 30(2));
 - (e) state the circumstances in which that period may be extended (see section 102); 30
 - (f) state the effect of the following provisions –
 - (i) section 28 (closing a conduct investigation without making a finding);
 - (ii) section 30 (notice of findings); 35
 - (iii) section 36 (commitments).
- (5) The period mentioned in subsection (4)(c) is such period as the CMA may determine.

- (6) As soon as reasonably practicable after giving a conduct investigation notice, the CMA must publish a statement summarising the contents of the conduct investigation notice.

27 Consideration of representations

Before making a finding that an undertaking to which a conduct investigation relates has breached or is breaching a conduct requirement, the CMA must consider any representations that the undertaking makes in relation to the conduct investigation. 5

28 Closing a conduct investigation without making a finding

- (1) The CMA may close a conduct investigation at any time without making a finding as to whether or not a breach of a conduct requirement has occurred. 10
- (2) When the CMA decides to close a conduct investigation, the CMA must give the undertaking to which the investigation related a notice to that effect.
- (3) The notice must—
 - (a) describe the undertaking in respect of which the CMA began the investigation, 15
 - (b) state the conduct requirement to which the investigation related, and
 - (c) include the CMA’s reasons for closing the investigation.
- (4) As soon as reasonably practicable after giving a notice under subsection (2), the CMA must publish a statement summarising the contents of the notice. 20

29 Countervailing benefits exemption

- (1) The CMA must close a conduct investigation under section 28 where representations made by the undertaking to which the investigation relates lead the CMA to consider that the countervailing benefits exemption applies.
- (2) The countervailing benefits exemption applies where— 25
 - (a) the conduct to which the investigation relates gives rise to benefits to users or potential users of the digital activity in respect of which the conduct requirement in question applies,
 - (b) those benefits outweigh any actual or likely detrimental impact on competition resulting from a breach of the conduct requirement, 30
 - (c) the conduct is indispensable and proportionate to the realisation of those benefits, and
 - (d) the conduct does not eliminate or prevent effective competition.
- (3) Where the CMA closes a conduct investigation as a result of subsection (1), the undertaking to which the decision relates is to be treated as if the CMA had found that the conduct did not constitute a breach of the conduct requirement. 35

30 Notice of findings

- (1) The CMA must give a notice to the undertaking to which a conduct investigation relates setting out its findings as a result of the conduct investigation (subject to subsection (5)).
- (2) The notice must be given on or before the last day of the period (the “conduct investigation period”) of 6 months beginning with the day on which the conduct investigation notice is given to the undertaking. 5
- (3) The notice must—
 - (a) state whether or not the CMA has found that a breach has occurred, and 10
 - (b) include reasons for the CMA’s findings.
- (4) As soon as reasonably practicable after giving the notice, the CMA must publish a statement summarising the contents of the notice.
- (5) Subsection (1) does not apply where the CMA—
 - (a) closes the conduct investigation under section 28, or 15
 - (b) has accepted a commitment from the undertaking to which a conduct investigation relates (see section 36), in relation to the behaviour to which that commitment relates.

31 Enforcement orders

- (1) Where the CMA finds, as a result of a conduct investigation, that a designated undertaking has breached a conduct requirement, it may make an order (an “enforcement order”) imposing on the undertaking such obligations as the CMA considers appropriate for one or more of the following purposes—
 - (a) in a case where the breach is ongoing, stopping the breach; 20
 - (b) preventing the breach from happening again; 25
 - (c) addressing any damage caused by the breach.
- (2) The CMA may vary an enforcement order by making a revised version of that order.
- (3) An enforcement order may include transitional, transitory or saving provision.
- (4) An enforcement order must—
 - (a) specify the breach to which it relates; 30
 - (b) include the CMA’s reasons for imposing the obligations in the order.
- (5) The CMA may consult such persons as the CMA considers appropriate before making an enforcement order (including a revised version of an order).
- (6) Where the CMA decides to make an enforcement order (other than an interim enforcement order under section 32), it must do so as soon as reasonably practicable after giving the undertaking a notice of its findings under section 30(1). 35

- (7) As soon as reasonably practicable after making an enforcement order (including a revised version of an order), the CMA must publish a statement summarising the contents of the order.
- (8) The CMA may consent to an undertaking acting in a way that would otherwise constitute a breach of an enforcement order. 5

32 Interim enforcement orders

- (1) The CMA may make an enforcement order on an interim basis (an “interim enforcement order”) in relation to a suspected breach of a conduct requirement where –
 - (a) the CMA has begun a conduct investigation in relation to the suspected breach, and 10
 - (b) the CMA considers that it is necessary to act on an interim basis –
 - (i) to prevent significant damage to a particular person or category of person,
 - (ii) to prevent conduct which could reduce the effectiveness of any other steps the CMA might take in relation to the conduct requirement which it suspects the undertaking has breached or is breaching, or 15
 - (iii) to protect the public interest.
- (2) An interim enforcement order must specify the suspected breach to which it relates. 20
- (3) Before making an interim enforcement order the CMA must give the undertaking to which it would relate an opportunity to make representations to it about the order which it proposes to make.
- (4) But the duty in subsection (3) does not apply where the CMA considers that compliance would substantially reduce the effectiveness of the order. 25
- (5) Where the CMA makes an interim enforcement order in relation to an undertaking without complying with subsection (3), the CMA must, as soon as reasonably practicable, give the undertaking a notice including –
 - (a) the reasons for the CMA’s decision to make the interim enforcement order without complying with subsection (3), and 30
 - (b) the period within which the undertaking may make representations in relation to the interim enforcement order (see subsection (7)).
- (6) As soon as reasonably practicable after giving a notice under subsection (5), the CMA must publish a statement summarising the contents of the notice. 35
- (7) The period mentioned in subsection (5)(b) is such period as the CMA may determine.
- (8) The CMA must consider representations which it receives following a notice under subsection (5) as soon as reasonably practicable.

33 Duration of enforcement orders

- (1) An enforcement order (including a revised version of an order) comes into force at such time as the CMA may specify in the order.
- (2) An interim enforcement order ceases to have effect –
 - (a) when revoked under section 34, 5
 - (b) subject to provision made in reliance on section 17 (existing obligations), when the designation to which it relates ceases to have effect, or
 - (c) when one of the following events occurs in relation to the suspected breach to which the order relates – 10
 - (i) the CMA gives the undertaking a notice stating that the CMA has found that no breach has occurred (see section 30);
 - (ii) the CMA accepts a commitment from the undertaking (see section 36(3));
 - (iii) the CMA makes an enforcement order (see section 31(1)); 15
 - (iv) the CMA notifies the undertaking that it has decided not to make an enforcement order that is not an interim enforcement order.
- (3) An enforcement order other than an interim enforcement order ceases to have effect – 20
 - (a) when revoked under section 34, or
 - (b) subject to provision made in reliance on section 17 (existing obligations), when the designation to which it relates ceases to have effect.
- (4) The fact that an enforcement order ceases to have effect does not affect the exercise of any functions in relation to a breach or possible breach of that order. 25

34 Revocation of enforcement orders

- (1) The CMA may revoke an enforcement order by giving a notice to that effect to the undertaking to which the order applies. 30
- (2) The notice must include the reasons for the CMA’s decision to revoke the enforcement order.
- (3) The notice may include transitional, transitory or saving provision in relation to the revocation of the enforcement order.
- (4) As soon as reasonably practicable after revoking an enforcement order, the CMA must publish a statement summarising the contents of the notice. 35
- (5) The CMA may consult such persons as the CMA considers appropriate on any proposal to revoke an enforcement order.

35 Duty to keep enforcement orders under review

The CMA must keep under review –

- (a) the extent to which an undertaking to which it has given an enforcement order is complying with that order,
- (b) the effectiveness of an enforcement order, 5
- (c) whether to vary or revoke an enforcement order,
- (d) where an enforcement order is revoked, whether to make a new enforcement order, and
- (e) whether to take action in accordance with Chapter 7 (enforcement and appeals) in respect of an undertaking which does not comply with an enforcement order. 10

Commitments relating to conduct requirements

36 Commitments

- (1) The CMA may accept an appropriate commitment from an undertaking subject to a conduct investigation as to its behaviour in respect of a conduct requirement to which the investigation relates. 15
- (2) A commitment is appropriate where the CMA considers that compliance with the commitment by the undertaking would mean that it would not be necessary to carry out a conduct investigation so far as relating to the behaviour to which the commitment relates. 20
- (3) Following the acceptance of a commitment by the CMA as to the behaviour of an undertaking –
 - (a) the undertaking that gave the commitment must comply with it at all times when it is in force, and
 - (b) so far as relating to the behaviour, the CMA may not give a notice to the undertaking under section 30 (notice of findings). 25
- (4) The acceptance of a commitment does not prevent –
 - (a) a conduct investigation from continuing so far as it relates to other behaviour in relation to the same or a different conduct requirement, or 30
 - (b) the CMA beginning a new conduct investigation in relation to the behaviour to which the commitment relates where –
 - (i) it has reasonable grounds to believe that there has been a material change of circumstances since the commitment was accepted, 35
 - (ii) it has reasonable grounds to suspect that the undertaking has not complied with one or more of the terms of the commitment, or
 - (iii) it has reasonable grounds to suspect that information which led it to accept the commitment was incomplete, false or misleading in a material particular. 40

- (5) A commitment under this section –
- (a) comes into force when a notice of its acceptance is published by the CMA, and
 - (b) ceases to have effect when –
 - (i) the conduct requirement to which the commitment relates ceases to have effect, or
 - (ii) if earlier, the undertaking is released from the requirement to comply with the commitment. 5
- (6) The CMA may by notice accept a variation to a commitment from time to time provided the commitment as varied would still be appropriate. 10
- (7) The CMA may release an undertaking from the requirement to comply with a commitment where it considers that it would be appropriate to do so.
- (8) The fact that a commitment ceases to have effect does not affect the exercise of any functions in relation to a breach or possible breach of that commitment.
- (9) Schedule 1 makes provision about – 15
- (a) accepting or accepting a variation of a commitment, and
 - (b) releasing an undertaking from the requirement to comply with a commitment,
- for the purposes of this Chapter and Chapter 4 (pro-competition orders).
- 37 Duty to keep commitments under review etc** 20
- The CMA must keep under review –
- (a) the appropriateness of a commitment or releasing an undertaking from a commitment,
 - (b) the extent to which an undertaking which has given a commitment is complying with it, and 25
 - (c) the appropriateness of taking further action in accordance with Chapter 7 (enforcement and appeals) in respect of an undertaking which does not comply with a commitment which it has given.

Final offer mechanism

- 38 Power to adopt final offer mechanism** 30
- (1) Where the CMA considers that the following three conditions are met in relation to a proposed transaction between a designated undertaking and a third party, the CMA may –
- (a) require the undertaking, and
 - (b) invite the third party, 35
- to submit to the CMA terms as to payment (“final offer payment terms”) which the undertaking or, as the case may be, the third party regards as fair and reasonable for the transaction.

- (2) The first condition is that the proposed transaction is a transaction in which the designated undertaking would –
 - (a) provide goods or services to the third party, or
 - (b) acquire goods or services from, or use goods and services of, the third party. 5
- (3) The second condition is that, by failing to agree fair and reasonable terms as to payment for the proposed transaction, the designated undertaking has breached an enforcement order, other than an interim enforcement order, made in relation to a breach of a conduct requirement of the type permitted by section 20(2)(a) (requirement to trade on fair and reasonable terms). 10
- (4) The third condition is that the CMA could not satisfactorily address the breach within a reasonable time frame by exercising any of its other digital markets functions.
- (5) In subsection (1) the reference to a third party includes a reference to two or more persons whom the CMA regards as acting or capable of acting jointly in relation to a transaction. 15
- (6) In sections 39 to 42 –
 - “the designated undertaking” means the designated undertaking mentioned in subsection (1);
 - “the proposed transaction” means the proposed transaction mentioned in subsection (1); 20
 - “the third party” means the third party mentioned in subsection (1).

39 Final offer mechanism

- (1) The power conferred by section 38(1) is to be exercised by giving a notice (a “final offer initiation notice”) to the designated undertaking and the third party. 25
- (2) The final offer initiation notice must –
 - (a) specify the designated undertaking, the third party and the digital activity in respect of which the power is being exercised;
 - (b) describe the breach of the enforcement order in relation to which the second condition in section 38 is met; 30
 - (c) summarise the proposed transaction;
 - (d) specify a date (the “submission date”) on or before which final offer payment terms are to be submitted to the CMA;
 - (e) state the period by the end of which the CMA must make any final offer order (see section 40(3)); 35
 - (f) state the circumstances in which that period may be extended (see section 102).
- (3) As soon as reasonably practicable after giving a final offer initiation notice, the CMA must publish a statement which – 40
 - (a) includes the information mentioned in subsection (2), and

- (b) if the CMA is considering taking any other action relating to any underlying cause of the breach of the enforcement order, includes a summary of, and explanation for considering, that action.
- (4) To facilitate the submission of final offer payment terms, the CMA may, among other things – 5
 - (a) use an information notice to require that the designated undertaking or the third party give information to the CMA (see section 67);
 - (b) share information between the designated undertaking and the third party in accordance with section 241 of EA 2002 (statutory functions);
 - (c) specify the form or manner in which final offer payment terms must be submitted. 10
- (5) The CMA may change the submission date by giving the designated undertaking and the third party a further notice specifying the new date.

40 Final offers: outcome

- (1) This section applies where – 15
 - (a) the CMA has exercised its power under section 38(1), and
 - (b) either –
 - (i) the CMA has received final offer payment terms from both the designated undertaking and the third party, or
 - (ii) the CMA has received final offer payment terms from only one of the designated undertaking and the third party, and the submission date has passed. 20
- (2) The CMA must, unless subsection (6) applies, make an order (a “final offer order”) requiring that final offer payment terms it has received from the designated undertaking or the third party are to be included as terms of – 25
 - (a) the proposed transaction, and
 - (b) any transaction between the designated undertaking and the third party which is substantially the same as the proposed transaction.
- (3) The CMA must comply with subsection (2) on or before the last day of the period (the “final offer period”) of 6 months beginning with the day on which the final offer initiation notice is given to the designated undertaking and the third party. 30
- (4) The Secretary of State may by regulations amend this section so as to modify the length of the final offer period.
- (5) Regulations under subsection (4) are subject to the affirmative procedure. 35
- (6) The CMA may decide not to make a final offer order in relation to the proposed transaction where it has reasonable grounds to believe that there has been a material change of circumstances since the final offer initiation notice was given.

- (7) For the purposes of this section and section 42(3) a material change of circumstances includes an agreement between the designated undertaking and the third party with respect to terms as to payment in relation to the proposed transaction.
 - (8) Where the CMA decides not to make a final offer order, it must give a notice to that effect to the designated undertaking and the third party. 5
 - (9) The notice must include the reasonable grounds referred to in subsection (6).
 - (10) As soon as reasonably practicable after giving a notice under subsection (8), the CMA must publish a statement summarising the contents of the notice.
- 41 Final offer orders: supplementary** 10
- (1) A final offer order must impose on the designated undertaking such obligations as the CMA considers appropriate for the purpose of—
 - (a) securing compliance with the requirement imposed by virtue of section 40(2), and
 - (b) preventing the designated undertaking from making an agreement with the third party which conflicts with that requirement. 15
 - (2) At the same time as making a final offer order, the CMA must give the designated undertaking and the third party a notice—
 - (a) summarising the proposed transaction,
 - (b) including the reasons for the order, and 20
 - (c) enclosing a copy of the order.
 - (3) As soon as reasonably practicable after making a final offer order, the CMA must publish a statement summarising the contents of the final offer order and the notice given under subsection (2).
- 42 Duration and revocation of final offer orders** 25
- (1) A final offer order comes into force at such time as the CMA may specify in the order.
 - (2) A final offer order ceases to have effect—
 - (a) when revoked under this section, or
 - (b) subject to provision made in reliance on section 17 (existing obligations), when the designation to which it relates ceases to have effect. 30
 - (3) The CMA may revoke a final offer order where it has reasonable grounds to believe that there has been a material change of circumstances since the final offer order was made. 35
 - (4) Where the CMA decides to revoke a final offer order, it must give a notice to that effect to the designated undertaking and to the third party.
 - (5) The notice must include the reasons for the CMA’s decision.

- (6) The notice may include transitional, transitory or saving provision in relation to the revocation of the final offer order.
- (7) As soon as reasonably practicable after revoking a final offer order, the CMA must publish a statement summarising the contents of the notice revoking the order. 5
- (8) The fact that a final offer order ceases to have effect does not affect the exercise of any digital markets functions in relation to a breach or possible breach of that order.

43 Duty to keep final offer orders under review

The CMA must keep under review – 10

- (a) the extent to which a designated undertaking to which it has given a final offer order is complying with that order,
- (b) the effectiveness of the final offer order,
- (c) whether to revoke the final offer order, and
- (d) whether to take action in accordance with Chapter 7 (enforcement and appeals) in respect of an undertaking which does not comply with a final offer order. 15

CHAPTER 4

PRO-COMPETITION INTERVENTIONS

44 Power to make pro-competition interventions 20

- (1) The CMA may make a pro-competition intervention (a “PCI”) in relation to a designated undertaking where, following a PCI investigation (see section 45), the CMA considers that –
 - (a) a factor or combination of factors relating to a relevant digital activity is having an adverse effect on competition, and 25
 - (b) making the PCI would be likely to contribute to, or otherwise be of use for the purpose of, remedying, mitigating or preventing the adverse effect on competition.
- (2) In considering whether to make a PCI, and the form and content of any PCI, the CMA may have regard to any benefits to UK users or UK customers that the CMA considers have resulted, or may be expected to result, from a factor or combination of factors that is having an adverse effect on competition. 30
- (3) A PCI may take the form of one or both of the following –
 - (a) an order imposing on the designated undertaking requirements as to how the undertaking must conduct itself, in relation to the relevant digital activity or otherwise (a “pro-competition order”: see section 49); 35
 - (b) recommendations made by the CMA to any person exercising functions of a public nature about steps which the CMA considers the person

ought to take in respect of the designated undertaking or the digital activity, or otherwise.

- (4) A PCI may include provision for the purposes of remedying, mitigating or preventing any detrimental effect on UK users or UK customers that the CMA considers has resulted, or may be expected to result, from the adverse effect on competition to which the PCI relates. 5
- (5) A factor or combination of factors relating to a digital activity has an adverse effect on competition where it prevents, restricts or distorts competition in connection with the relevant digital activity in the United Kingdom.

45 Power to begin a PCI investigation etc 10

- (1) The CMA may begin an investigation (a “PCI investigation”) in relation to a designated undertaking where it has reasonable grounds to consider that a factor or combination of factors relating to a relevant digital activity may be having an adverse effect on competition.
- (2) A PCI investigation is an investigation to enable the CMA to determine – 15
 - (a) whether to make a PCI, and
 - (b) if it concludes that it should make a PCI, the form and content of that PCI.

46 Procedure relating to PCI investigations

- (1) Where the CMA begins a PCI investigation it must give the designated undertaking to which the investigation relates a notice (a “PCI investigation notice”). 20
- (2) The PCI investigation notice must state –
 - (a) the reasonable grounds mentioned in section 45(1);
 - (b) the purpose and scope of the PCI investigation; 25
 - (c) the period by the end of which the CMA must give the undertaking a notice setting out its decision as a result of the investigation (see section 48(1));
 - (d) the circumstances in which that period may be extended (see section 102). 30
- (3) The CMA may give the undertaking one or more revised versions of the PCI investigation notice if it refines its view of the purpose and scope of the investigation, provided that the purpose and scope of the investigation remains substantially the same.
- (4) As soon as reasonably practicable after giving a PCI investigation notice or a revised version of the PCI investigation notice, the CMA must publish a statement summarising the contents of the notice or the revised version of the notice. 35

47 Consultation on proposed PCI decision

- (1) Before making a final decision (a “PCI decision”) on whether to make a PCI as a result of a PCI investigation, the CMA must—
 - (a) carry out a public consultation on its proposed decision, and
 - (b) bring the public consultation to the attention of such persons as it considers appropriate. 5
- (2) For the purposes of the consultation the CMA must publish a statement setting out—
 - (a) the CMA’s findings as a result of the investigation, and
 - (b) a description of any PCI which the CMA is considering making. 10

48 PCI decision

- (1) The CMA must give the designated undertaking to which a PCI investigation relates a notice of the PCI decision resulting from the investigation on or before the last day of the period (the “PCI investigation period”) of 9 months beginning with the day on which the PCI investigation notice is given to the undertaking. 15
- (2) The notice must—
 - (a) state the CMA’s findings as a result of the PCI investigation,
 - (b) describe any PCI which the CMA intends to make, and
 - (c) include reasons for the CMA’s findings and decision. 20
- (3) The giving of a revised version of the PCI investigation notice under section 46(3) does not change the day on which the PCI investigation period begins.
- (4) The CMA must make any PCI within the period of 4 months beginning with the day on which the CMA gives the notice.
- (5) The CMA may extend the period mentioned in subsection (4) by up to 2 months where it considers that there are special reasons for doing so. 25
- (6) Where the CMA decides not to make a PCI having previously indicated in a notice under subsection (1) that it intended to make a PCI, the CMA must give the undertaking a further notice—
 - (a) stating the CMA’s decision, and 30
 - (b) including reasons for the decision.
- (7) As soon as reasonably practicable after giving a notice under subsection (1) or (6), the CMA must publish a copy of the notice.

49 Pro-competition orders

- (1) A pro-competition order may include any provision that may be included in an enforcement order under section 161 of EA 2002 (final orders following market investigation references; and see sections 161 and 164 of and Schedule 8 to EA 2002 on the provision that may be included). 35

- (2) For the purposes of subsection (1), Schedule 8 to EA 2002 (provision that may be contained in certain enforcement orders) has effect as if—
 - (a) the reference in paragraph 8(2) to “the relevant report” were to the notice under section 48(2) of this Act;
 - (b) paragraphs 20A to 20BA were omitted. 5
- (3) A pro-competition order may include provision imposing requirements on an undertaking on a trial basis for the purpose of assisting the CMA in establishing requirements that would be effective in remedying, mitigating or preventing—
 - (a) the adverse effect on competition to which the order relates; 10
 - (b) any detrimental effect on UK users or UK customers resulting from, or expected to result from, the adverse effect on competition.
- (4) The provision that may be made in reliance on subsection (3) includes provision requiring an undertaking to act differently in respect of different users or customers (and such provision may be by reference to a description of users or customers, to absolute numbers of users or customers, or to a proportion of the undertaking’s total number of users or customers). 15
- (5) A pro-competition order must contain provision in accordance with section 53(3) (duty to ensure order contains date of next review).
- (6) As soon as reasonably practicable after making a pro-competition order, the CMA must publish a statement summarising the contents of the order. 20

50 Replacement of pro-competition orders

- (1) The CMA may, by making a further pro-competition order, replace a pro-competition order where it considers that it is appropriate to do so, having regard in particular to—
 - (a) the effectiveness of the pro-competition order, or of particular provisions in the pro-competition order, in remedying, mitigating or preventing the adverse effect on competition and, where applicable, any detrimental effect on UK users or UK customers identified in the PCI investigation, and 25
 - (b) any change of circumstances since the pro-competition order was made. 30
- (2) The CMA may, in particular, replace a pro-competition order so as to—
 - (a) replace requirements imposed by virtue of that order on a trial basis, or 35
 - (b) impose requirements on an undertaking that are similar to or informed by one or more requirements previously imposed on that undertaking, or on a different undertaking, by virtue of another pro-competition order on a trial basis.
- (3) In this Chapter—
 - (a) references to making a replacement order are to revoking a pro-competition order (see section 51) made following a PCI 40

investigation and making a new pro-competition order in reliance on the findings of that PCI investigation, and

- (b) references to a “replacement order” are to a pro-competition order made in reliance on subsection (1).

51 Duration and revocation etc of pro-competition orders 5

- (1) A pro-competition order comes into force at such time as the CMA may specify in the order.
- (2) A pro-competition order ceases to have effect—
- (a) when revoked under this section, or
 - (b) subject to provision made in reliance on section 17 (existing obligations), when the designation to which it relates ceases to have effect. 10
- (3) The CMA may revoke a pro-competition order where it considers that it is appropriate to do so, having regard in particular to any change of circumstances since the pro-competition order was made. 15
- (4) Where the CMA decides to revoke a pro-competition order, it must give a notice to that effect to the designated undertaking to which the order relates.
- (5) The notice may include transitional, transitory or saving provision in relation to the revocation of the pro-competition order.
- (6) The CMA must publish the notice as soon as reasonably practicable after giving it. 20
- (7) Where a pro-competition order resulting from a PCI investigation is revoked without being replaced, the CMA may not make a new pro-competition order in reliance on the same PCI investigation.
- (8) The fact that a pro-competition order ceases to have effect does not affect the exercise of any functions in relation to a breach or possible breach of that order. 25

52 Consultation

- (1) The CMA must carry out a public consultation on the terms of any pro-competition order before making it (subject to subsection (4)). 30
- (2) The duty to consult imposed by subsection (1) may be satisfied by consultation on a proposed PCI decision in a case where—
- (a) a draft pro-competition order was published for the purposes of that consultation, and
 - (b) the CMA proposes to make a pro-competition order that is the same or materially the same as the draft pro-competition order. 35
- (3) Before revoking a pro-competition order, the CMA must—
- (a) carry out a public consultation on the proposed revocation, and

- (b) bring the public consultation to the attention of such persons as it considers appropriate.
- (4) The duties in subsections (1) and (3) do not apply in relation to the making of a replacement order which, in the opinion of the CMA, is not materially different from the order which it replaces.

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53 Duty to review pro-competition orders etc

- (1) The CMA must carry out a review of a pro-competition order, including a replacement order, to determine whether to—
 - (a) revoke it without making a replacement order, or
 - (b) make a replacement order.
- (2) Each time the CMA makes a pro-competition order, including a replacement order, it must identify a date by which it will carry out the review under subsection (1).
- (3) The CMA must secure that the date is specified in the order.
- (4) The CMA must keep under review—
 - (a) the effectiveness of a pro-competition order;
 - (b) the extent to which an undertaking subject to a pro-competition order is complying with it;
 - (c) whether to take action in accordance with Chapter 7 (enforcement and appeals) in respect of any undertaking that breaches a pro-competition order.

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54 Commitments

- (1) The CMA may accept an appropriate commitment from a designated undertaking as to its conduct in respect of an adverse effect on competition or a detrimental effect on UK users or UK customers that the CMA considers has resulted, or may be expected to result, from an adverse effect on competition.
- (2) A commitment is appropriate where the CMA considers that compliance with the commitment by the undertaking would contribute to or otherwise be of use in remedying, mitigating or preventing—
 - (a) the adverse effect on competition, or
 - (b) the detrimental effect on UK users or UK customers.
- (3) Following the acceptance of a commitment by the CMA as to the conduct of an undertaking—
 - (a) the undertaking that gave the commitment must comply with it at all times when it is in force, and
 - (b) so far as relating to the conduct, the CMA may give a notice to the undertaking—

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- (i) ending a PCI investigation (if it has begun one) without making a PCI decision, or
 - (ii) changing the scope of a PCI investigation.
- (4) As soon as reasonably practicable after giving a notice under subsection (3)(b), the CMA must publish a statement summarising the contents of the notice. 5
- (5) The acceptance of a commitment does not prevent—
- (a) a PCI investigation from continuing so far as it relates to conduct other than that to which the commitment relates, or
 - (b) the CMA beginning a new PCI investigation in relation to the conduct to which the commitment relates where it has reasonable grounds— 10
 - (i) to believe that there has been a material change of circumstances since the commitment was accepted,
 - (ii) to suspect that the undertaking has not complied with one or more of the terms of the commitment, or
 - (iii) to suspect that information which led it to accept the commitment was incomplete, false or misleading in a material particular. 15
- (6) A commitment under this section—
- (a) comes into force when a notice of its acceptance is published by the CMA, and 20
 - (b) ceases to have effect when—
 - (i) the undertaking is released from the requirement to comply with the commitment, or
 - (ii) when the designation to which it relates ceases to have effect.
- (7) The following provisions apply in relation to commitments under this section 25 as they apply in relation to commitments under section 36—
- (a) subsections (6) to (9) of section 36;
 - (b) section 37.

CHAPTER 5

MERGERS 30

55 Duty to report possible mergers etc

- (1) A relevant person (in this Chapter, “P”) must report an event to which subsection (2) or (3) applies (a “reportable event”) to the CMA before the event takes place.
- (2) This subsection applies to an event where— 35
- (a) the event results in P having qualifying status (see section 56) in respect of shares or voting rights in relation to a UK-connected body corporate, and

- (b) the value of all consideration (see section 57) provided by P, whether before or as part of the event, for shares or voting rights in the UK-connected body corporate is at least £25 million.
- (3) This subsection applies to an event which consists of the formation by P and at least one other person of a body corporate (in this Chapter, a “joint venture vehicle”) where –
 - (a) P expects or intends that the joint venture vehicle will be a UK-connected body corporate,
 - (b) P has qualifying status in respect of shares or voting rights in relation to the joint venture vehicle, and
 - (c) the total value of –
 - (i) all capital and assets contributed by P to the joint venture vehicle when it is formed, and
 - (ii) all other consideration provided by P, whether directly or indirectly, in relation to the formation of the joint venture vehicle,is at least £25 million.
- (4) In this Chapter, “relevant person” means –
 - (a) a designated undertaking, or
 - (b) where a designated undertaking is part of a group, any member of that group.
- (5) In this Chapter, a “UK-connected body corporate” is any body corporate (wherever established or recognised) which –
 - (a) carries on activities in the United Kingdom, or
 - (b) supplies goods or services (whether for consideration or otherwise) to a person or persons in the United Kingdom.
- (6) For the purposes of subsection (5), anything done by a subsidiary of a body corporate is to be treated as being done by the body corporate.
- (7) The reference in subsection (3) to an “other person” is to a person who is not –
 - (a) the designated undertaking or part of the designated undertaking, or
 - (b) where the designated undertaking is part of a group, a member of that group.
- (8) The duty to report an event under subsection (1) is subject to provision made by or under regulations under section 65.
- (9) For steps that the CMA may take in relation to a possible merger, see –
 - (a) section 33 of EA 2002 (duty to make references in relation to anticipated mergers), and
 - (b) section 72 of that Act (initial enforcement orders).

56 Qualifying status

- (1) For the purposes of section 55(2), an event results in P having qualifying status in respect of shares or voting rights in relation to a UK-connected body corporate where the event results in the percentage of the shares or, as the case may be, the voting rights that P holds in the body corporate increasing— 5
 - (a) from less than 15% to 15% or more,
 - (b) from 25% or less to more than 25%, or
 - (c) from 50% or less to more than 50%.
- (2) For the purposes of section 55(3), P has qualifying status in respect of shares or voting rights in relation to a joint venture vehicle where the event results in P holding at least 15% of the shares or, as the case may be, voting rights in the joint venture vehicle. 10
- (3) In subsections (1) and (2), references to holding a percentage of shares are— 15
 - (a) in the case of a body corporate that has a share capital, to holding shares comprised in the issued share capital of the body corporate of a nominal value (in aggregate) of that percentage of the share capital,
 - (b) in the case of a body corporate that does not have a share capital, to holding a right to a share of that percentage of the capital or profits of the body corporate, and
 - (c) in the case of a limited liability partnership, to holding a right to a share of that percentage of any surplus assets of the partnership on a winding up. 20
- (4) For the purposes of subsection (3)(c), to the extent that rights to share in any surplus assets of the limited liability partnership on a winding up are not expressly provided for, each member of the partnership is to be treated as holding the right to an equal share of such assets. 25
- (5) In subsections (1) and (2), references to voting rights are— 30
 - (a) in the case of a body corporate that has a share capital, to the rights conferred on shareholders in respect of their shares to vote at general meetings of the body corporate on all or substantially all matters, and
 - (b) in the case of a body corporate that does not have a share capital, to the rights conferred on members to vote at general meetings of the body corporate on all or substantially all matters,

and, in the case of a body corporate that does not have general meetings at which matters are decided by such votes, include any rights in relation to the body corporate that have the equivalent effect. 35
- (6) A person is to be treated for the purposes of this Chapter as acquiring an interest or right (to the extent that the person would not otherwise be regarded as doing so) where the interest or right becomes treated as held by the person by virtue of Schedule 2. 40

57 Value of consideration

- (1) The references in section 55(2)(b) to the value of the consideration provided by P for shares or voting rights in a UK-connected body corporate is a reference to the value of all consideration provided by P, whether directly or indirectly, for shares or voting rights in the body corporate in all transactions which result in P holding shares or voting rights in the body corporate (whether or not the transaction is an event within section 55(2)). 5
- (2) In this Chapter, references to “consideration” are to fees, remuneration, assets of any description, liabilities assumed and any other kind of consideration, however provided, and include conditional and deferred consideration. 10
- (3) The Secretary of State may by regulations make further provision about how the value of—
 - (a) consideration,
 - (b) capital, or
 - (c) assets,is to be calculated for the purposes of this Chapter. 15
- (4) The Secretary of State must consult the CMA before making regulations under subsection (3). 5
- (5) Regulations under subsection (3) are subject to the negative procedure.

58 Content of report etc

- (1) The CMA must by notice make provision setting out—
 - (a) the information which a report for the purposes of section 55(1) must contain;
 - (b) the form in which such a report must be made.20
- (2) The notice may not require a report to contain information other than information which the CMA considers necessary to allow it to determine whether to—
 - (a) begin an investigation for the purposes of deciding whether to make a reference under section 33 of EA 2002 in relation to a reportable event, or 25
 - (b) make an initial enforcement order under section 72 of that Act in relation to a reportable event. 30
- (3) The CMA may from time to time replace the notice.
- (4) The CMA must publish any notice or replacement notice which it makes under this section. 35
- (5) The CMA must consult—
 - (a) the Secretary of State, and
 - (b) such other persons as it considers appropriate, before making or replacing a notice under this section.

59 Application of the duty to report etc

- (1) Two or more persons may comply with the duty in section 55(1) by making a joint report to the CMA.
- (2) For the purposes of this Chapter, where a designated undertaking is part of a group – 5
 - (a) anything which a member of a group does or fails to do is to be treated as being done or not done by each member of the group;
 - (b) each member of a group is to be treated as providing the combined consideration provided by all members of the group;
 - (c) each member of a group is to be treated as holding the combined interests or rights of all members of the group. 10
- (3) Schedule 2 makes further provision about cases in which a person is to be treated for the purposes of this Chapter as holding an interest or right.
- (4) The duty to make a report under section 55(1) does not apply – 15
 - (a) in relation to a reportable event which does not differ in any material respect from an event which has already been reported under section 55(1);
 - (b) in relation to a reportable event so far as it consists of “notified arrangements” within the meaning of section 96(6) of EA 2002;
 - (c) in relation to a reportable event so far as the CMA has informed P in accordance with section 34ZA(1)(b) of EA 2002 (time limits for decisions about references: requirement to provide notice) that it is investigating a matter that does not differ in any material respect from the reportable event; 20
 - (d) in relation to a reportable event so far as the Secretary of State has given the CMA an intervention notice under section 42 of EA 2002 (intervention by the Secretary of State in certain public interest cases) in relation to a relevant merger situation that does not differ in any material respect from the reportable event; 25
 - (e) in relation to a reportable event so far as the Secretary of State has given the CMA a special intervention notice under section 59 of EA 2002 (intervention by the Secretary of State in special public interest cases) in relation to a special merger situation that does not differ in any material respect from the reportable event. 30
- (5) This Chapter does not require any steps to be taken in relation to an event where, after it has been reported to the CMA – 35
 - (a) the Secretary of State gives the CMA an intervention notice under section 42 of EA 2002 in relation to a relevant merger situation that does not differ in any material respect from the event;
 - (b) the Secretary of State gives the CMA a special intervention notice under section 59 of EA 2002 in relation to a special merger situation that does not differ in any material respect from the event; 40

- (c) the CMA makes an initial enforcement order under section 72 of EA 2002 imposing obligations, prohibitions or restrictions in relation to the event;
- (d) the undertaking to which the event relates ceases to be a designated undertaking.

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60 Acceptance of report

- (1) Where the CMA receives a report under section 55(1), the CMA must, within the period of 5 working days beginning with the first working day after the day on which it receives the report, give a notice to the person that made the report confirming whether the CMA accepts that the report is sufficient. 10
- (2) Where the CMA does not accept that a report is sufficient it must, in its notice under subsection (1), include reasons for its decision.
- (3) The CMA may not decide that a report is not sufficient where the report—
 - (a) contains all information required by notice under section 58(1)(a), and
 - (b) is made in the form required by notice under section 58(1)(b). 15
- (4) A person who makes a report under section 55(1) may withdraw that report at any time before the CMA gives notice that it has accepted that the report is sufficient.
- (5) Where a report is withdrawn, this Chapter applies as if the event to which it related had not been reported to the CMA. 20
- (6) For the purposes of this section and section 61, “working day” means any day which is not—
 - (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
 - (b) a day which is a bank holiday in England and Wales.

61 Delay to possible mergers etc

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- (1) A person to whom the duty in section 55(1) applies in relation to a reportable event must not allow the event to take place—
 - (a) without a report in relation to the event having been given to the CMA under section 55(1), or
 - (b) before the end of the waiting period in relation to the event. 30
- (2) The waiting period in relation to a reportable event is the period of 5 working days (as defined in section 60) beginning with the first working day after the day on which the CMA gives the person that made a report a notice under section 60(1) confirming that the CMA accepts that the report relating to the event is sufficient. 35
- (3) If a reportable event takes place in contravention of subsection (1), each person to whom the duty in section 55(1) applied in relation to the event is to be treated as having breached subsection (1).
- (4) The CMA may —

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- (a) give its consent to a reportable event happening before the end of the waiting period;
- (b) revoke that consent before the reportable event happens.
- (5) Subsection (1) does not apply in relation to a reportable event where the CMA gives and does not revoke consent under subsection (4) in relation to a reportable event. 5
- (6) Section 95 of EA 2002 (rights to enforce statutory restrictions) applies in relation to the obligation to comply with subsection (1) as it applies in relation to the obligation to comply with section 77(2) or (3) or 78(2) of that Act.
- 62 Timing of a reportable event 10**
- Where a reportable event results from an agreement providing for P to acquire shares or voting rights, or to form a joint venture vehicle together with at least one other person, the event is to be treated as taking place for the purposes of section 55(1) and section 61(1) when P becomes unconditionally obliged to acquire the shares or voting rights, or to form the joint venture vehicle. 15
- 63 Authorisation for one person to act for another**
- (1) P may authorise another person (“Q”) to make a report under section 55(1) and receive the notice under section 60(1) which relates to the report on P’s behalf by giving a notice of the authorisation to the CMA. 20
- (2) P may revoke an authorisation made under this section by giving a notice to that effect to the CMA.
- (3) A notice under subsection (1) or (2) must be signed by an officer of P.
- (4) In this section, references to an “officer” of an undertaking are to an officer of a body corporate that is, or is comprised in, the undertaking. 25
- 64 Applications for review of decisions relating to mergers**
- Section 120 of EA 2002 (review of decisions under Part 3 of EA 2002: mergers) applies in relation to a decision made by the CMA in connection with its functions under this Chapter, other than a decision about the imposition of a penalty under section 83(4) or 85, as it applies in relation to decisions listed in subsection (1A) of that section. 30
- 65 Regulations about duty to report**
- (1) The Secretary of State may by regulations make provision about the duty to report a reportable event.
- (2) The Secretary of State must consult the CMA before making regulations under subsection (1). 35

- (3) Regulations under subsection (1) may (among other things) make provision—
- (a) varying, adding or removing circumstances in which the duty to make a report applies;
 - (b) varying the period in section 60(1);
 - (c) varying the waiting period in section 61; 5
 - (d) about exemptions from the duty to make a report;
 - (e) varying, adding or removing circumstances in which one person may act on behalf of another under section 63;
 - (f) modifying how section 105 applies for the purposes of this Chapter or Schedule 2; 10
 - (g) conferring functions on the CMA in relation to the duty to report, including power to make provision by notice or general or specific directions about a matter mentioned in paragraph (d);
 - (h) amending this Chapter or Schedule 2.
- (4) Regulations under subsection (1) that contain provision made in reliance on any of paragraphs (a), (b), (c), (d), (e) or (h) of subsection (3), whether alone or with other provision, are subject to the affirmative procedure. 15
- (5) Any other regulations under subsection (1) are subject to the negative procedure.
- 66 Duty to keep compliance under review** 20
- The CMA must keep under review –
- (a) the extent to which persons comply with provisions made by, under or by virtue of this Chapter, and
 - (b) the appropriateness of taking action—
- (i) in accordance with section 95 of EA 2002 (rights to enforce statutory restrictions) in respect of any person to whom section 61(1) applies, and 25
 - (ii) in accordance with Chapter 7 (enforcement and appeals) in respect of any person that does not comply with provisions made by, under or by virtue of this Chapter. 30

CHAPTER 6

INVESTIGATORY POWERS ETC AND COMPLIANCE REPORTS

Investigatory powers etc

- 67 Power to require information**
- (1) For the purpose of exercising, or deciding whether to exercise, any of its digital markets functions, the CMA may require a person (“P”) to give specified information to it where it considers that the information is relevant to a digital markets function. 35

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- (2) The power conferred by subsection (1) is to be exercised by giving P a notice (an “information notice”).
- (3) The CMA must include in an information notice –
- (a) the time and place at which the specified information must be given to the CMA; 5
 - (b) the manner and form in which the information must be given to the CMA;
 - (c) information about the possible consequences of not complying with the notice.
- (4) The power under this section to require P to give information to the CMA includes the power to – 10
- (a) take copies of or extracts from information;
 - (b) require P to obtain or generate information;
 - (c) require P to collect or retain information that they would not otherwise collect or retain; 15
 - (d) if any specified information is not given to the CMA, require P to state, to the best of their knowledge and belief, both where that information is and why it has not been given to the CMA.
- (5) For the purposes of subsection (4)(b), the CMA may include in an information notice – 20
- (a) a requirement for P to vary their usual conduct (whether in relation to some or all users or potential users of any service or digital content that P provides);
 - (b) a requirement for P to perform a specified demonstration or test.
- (6) In this section, “specified” means – 25
- (a) specified, or described, in the information notice, or
 - (b) falling within a category which is specified, or described, in the information notice.
- (7) The powers conferred by this section are exercisable in relation to information whether it is stored within or outside the United Kingdom. 30

68 Requirement to name a senior manager

- (1) Where the CMA gives an information notice to a designated undertaking, the CMA may include in the notice a requirement that the undertaking must name, in response to the notice, an individual who – 35
- (a) the undertaking considers to be a senior manager of the undertaking, and
 - (b) may reasonably be expected to be in a position to ensure compliance with the requirements of the notice.
- (2) Where the CMA imposes a requirement to name an individual, the information notice must require the undertaking to inform the individual about the 40

consequences for the individual of any failure by the undertaking to comply with the notice (see section 85).

- (3) An individual can be considered to be a senior manager of an undertaking only if the individual plays a significant role in –
 - (a) making decisions about how the undertaking’s relevant activities are to be managed or organised, or
 - (b) managing or organising the undertaking’s relevant activities.
- (4) An undertaking’s “relevant activities” are activities relating to the undertaking’s compliance with requirements imposed on it by or under this Part.

69 Power of access

- (1) The CMA may exercise the powers in this section where it considers that a designated undertaking –
 - (a) has not complied with the requirements of an information notice (see section 67), or
 - (b) has not complied with the duty to assist a skilled person with the preparation of a report (see section 77(12)).
- (2) The CMA may access premises, equipment, services, information or persons in order to –
 - (a) supervise the obtaining, generation, collection or retention of information by the undertaking,
 - (b) observe the undertaking’s conduct in relation to users, or
 - (c) observe a demonstration or test performed by the undertaking,for the purpose of securing compliance with requirements imposed on the undertaking under section 67 or section 77(12).
- (3) Where the CMA requires access under subsection (2), it must give the undertaking a notice specifying –
 - (a) the access that it requires,
 - (b) a date by which the access must be provided, and
 - (c) the manner in which the access must be provided (which may be remote).
- (4) The undertaking must give the CMA the access specified in the notice under subsection (3).

70 Power to interview

- (1) If the CMA considers that an individual (“X”) has information relevant to a digital markets investigation, the CMA may give a notice to X requiring X to answer questions with respect to any matter relevant to that digital markets investigation –
 - (a) at a place or in a manner (which may be remote) specified in the notice, and

- (b) either at a time specified in the notice or on receipt of the notice.
- (2) The CMA must include in the notice—
- (a) details of the digital markets investigation;
 - (b) information about the possible consequences of not complying with the notice. 5
- (3) Where X is connected to (see section 115(3)) a designated undertaking or an undertaking which is the subject of an SMS investigation, the CMA must give a copy of the notice under subsection (1) to the undertaking.
- (4) The CMA must comply with the requirement under subsection (3)—
- (a) at the time the notice is given to X, or 10
 - (b) where that is not practicable, as soon as reasonably practicable after the notice is given to X.
- (5) The CMA, or any person nominated by it, may take evidence in answer to questions under subsection (1) on oath, and for that purpose may administer oaths. 15
- (6) The powers conferred by this section are not exercisable in relation to an individual outside the United Kingdom.

71 Use of interview statements in prosecution

- (1) A statement by X in response to a requirement imposed by virtue of section 70 (a “section 70 statement”) may only be used in evidence against X— 20
- (a) on a prosecution for an offence under section 91 or 92;
 - (b) on a prosecution for some other offence in a case falling within subsection (2).
- (2) A prosecution falls within this subsection if, in the proceedings—
- (a) in giving evidence, X makes a statement inconsistent with the section 70 statement, and 25
 - (b) evidence relating to the section 70 statement is adduced, or a question relating to it is asked, by or on behalf of X.

72 Power to enter business premises without a warrant

- (1) For the purposes of a breach investigation, the CMA may authorise an officer of the CMA (“an investigating officer”) to enter any business premises and exercise the powers in subsection (5) if the CMA has reasonable grounds to suspect that information is on or accessible from the premises that is relevant to the breach investigation. 30
- (2) No investigating officer is to enter any premises in the exercise of their powers under this section unless they have given to the occupier of the premises a notice which— 35
- (a) gives at least two working days’ notice of the intended entry,

- (b) describes the subject matter and purpose of the breach investigation, and
 - (c) includes information about the possible consequences of not complying with the notice.
- (3) Subsection (2) does not apply if – 5
 - (a) the CMA has a reasonable suspicion that the premises are, or have been, occupied by the designated undertaking which is the subject of the breach investigation, or
 - (b) the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so. 10
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of –
 - (a) evidence of their authorisation, and
 - (b) a document containing the information referred to in paragraphs (b) and (c) of subsection (2). 15
- (5) An investigating officer may, in addition to entering any premises –
 - (a) take with them such equipment as appears to them to be necessary;
 - (b) require any person on the premises to –
 - (i) give information to the officer which the officer considers relevant to the breach investigation; 20
 - (ii) if any required information is not given to the officer, state, to the best of the person’s knowledge and belief, where that information may be found;
 - (c) take copies of, or extracts from, any information given to an investigating officer; 25
 - (d) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any information which the officer considers relevant to the breach investigation.
- (6) Any information which is given to an investigating officer under subsection (5) must be in a form – 30
 - (a) in which it can be taken away, and
 - (b) which is visible and legible or from which it can be readily be generated in a visible and legible form.
- (7) The powers conferred by this section are not exercisable in relation to premises outside the United Kingdom. 35
- (8) But the powers conferred by this section are exercisable in relation to information whether it is stored within or outside the United Kingdom.
- (9) In this section –
 - “business premises” means premises (or any part of premises) not used as a dwelling; 40
 - “working day” means any day other than –

- (a) a Saturday or a Sunday, or
- (b) a day that is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

73 Power to enter premises under a warrant

- (1) On an application made to it by the CMA for the purposes of a breach investigation, the court or the Tribunal may issue a warrant if it is satisfied that – 5
- (a) there are reasonable grounds for suspecting that there is information on or accessible from any premises which is relevant to the breach investigation (“information of the relevant kind”), and 10
 - (b) one or both of the following applies –
 - (i) the exercise by the CMA of another digital markets investigation power has not resulted in the CMA being given the information of the relevant kind;
 - (ii) there are reasonable grounds for suspecting that there is no other digital markets investigation power the exercise of which would result in the CMA being given the information of the relevant kind. 15
- (2) A warrant under this section authorises a named officer of the CMA (“the authorised officer”), and any other of the CMA’s officers whom the CMA has authorised in writing to accompany the authorised officer, to – 20
- (a) enter the premises specified in the warrant, using such force as is reasonably necessary;
 - (b) take onto the premises such equipment as appears to the authorised officer to be necessary; 25
 - (c) search the premises for information appearing to be information of the relevant kind;
 - (d) operate any equipment found on the premises for the purpose of producing information;
 - (e) require any person on the premises to provide such assistance as the authorised officer may reasonably require (including providing passwords or encryption keys and operating equipment on the premises); 30
 - (f) require any person on the premises to give information to the authorised officer; 35
 - (g) require any person on the premises to state, to the best of their knowledge and belief, where information appearing to be of the relevant kind may be found;
 - (h) take copies of, or extracts from, any information appearing to be information of the relevant kind; 40
 - (i) take possession of any information appearing to be information of the relevant kind that is produced under paragraph (d) or given to the authorised officer under paragraph (f);

- (j) take possession of any other information appearing to be information of the relevant kind if—
 - (i) such action appears to be necessary for preserving the information or preventing interference with it, or
 - (ii) it is not reasonably practicable to take copies of the information on the premises; 5
 - (k) take any other steps which appear to be necessary for the purpose of preserving any information appearing to be information of the relevant kind or preventing interference with it.
- (3) Any information which is given to an investigating officer under subsection (2) must be in a form— 10
- (a) in which it can be taken away, and
 - (b) which is visible and legible or from which it can be readily be generated in a visible and legible form.
- (4) A warrant under this section may authorise persons specified in the warrant to accompany the authorised officer who is executing it. 15
- (5) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any information which the CMA obtains under subsection (2) may be retained for a period of three months. 20
- (7) For the purposes of this section and section 74—
- “business premises” has the meaning given by section 72(9);
 - “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—
 - (a) premises also used in connection with the affairs of an undertaking or, where the undertaking is part of a group, a member of that group, or 25
 - (b) premises where information relating to the affairs of an undertaking or, where the undertaking is part of a group, a member of that group, is located; 30
- “occupier”, in relation to any premises, means a person whom the authorised officer reasonably believes is the occupier of those premises;
- “premises” includes business premises and domestic premises.

74 Power to enter premises under a warrant: supplementary

- (1) A warrant under section 73 must describe— 35
- (a) the subject matter and purpose of the breach investigation, and
 - (b) the offence created by section 93.
- (2) The powers conferred by section 73 are to be exercised on production of the warrant issued under that section.

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- (3) If there is no one at the premises when the authorised officer proposes to execute the warrant they must, before executing it—
- (a) take reasonable steps to inform the occupier of the intended entry, and
 - (b) if the occupier is informed, afford them or their legal or other representative a reasonable opportunity to be present when the warrant is executed. 5
- (4) If the authorised officer is unable to inform the occupier of the intended entry they must, when executing the warrant, leave a copy of it in a prominent place on the premises. 10
- (5) On leaving any premises which they have entered by virtue of a warrant under section 73, the authorised officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as they found them.
- (6) The powers conferred by section 73 are not exercisable in relation to premises outside the United Kingdom. 15
- (7) But the powers conferred by section 73 are exercisable in relation to information whether it is stored within or outside the United Kingdom.

75 Amendments to the Criminal Justice and Police Act 2001

- (1) The Criminal Justice and Police Act 2001 is amended as follows. 20
- (2) In section 50 (additional powers of seizure from premises), at the end insert—
- “(7) Without prejudice to any power conferred by this section to take a copy of any document, nothing in this section, so far as it has effect by reference to the power to take copies of, or extracts from, information under section 73(2)(h) of the Digital Markets, Competition and Consumers Act 2023, is to be taken to confer any power to seize any information.” 25
- (3) In section 57 (retention of seized items), in subsection (1), at the end insert—
- “(v) section 73(6) of the Digital Markets, Competition and Consumers Act 2023.” 30
- (4) In section 63 (powers of seizure: copies), in subsection (1), at the end insert—
- “(d) for the purposes of this Part, except sections 50 and 51, the powers in section 73(2)(d) and (f) of the Digital Markets, Competition and Consumers Act 2023 are to be treated as powers of seizure, and references to seizure and to seized property are to be construed accordingly.” 35

- (5) In section 64 (meaning of “appropriate judicial authority”), in subsection (3), in paragraph (a), at the end insert –
- “(iv) section 73(2) of the Digital Markets, Competition and Consumers Act 2023.”
- (6) In section 65 (meaning of “legal privilege”), after subsection (3A) insert – 5
- “(3B) In relation to property which has been seized in exercise, or purported exercise, of –
- (a) the power of seizure conferred by section 73(2) of the Digital Markets, Competition and Consumers Act 2023, or
- (b) so much of any power of seizure conferred by section 50 as is exercisable by reference to that power, 10
- references in this Part to an item subject to legal privilege are to be read as references to a privileged communication within the meaning of section 79 (privileged communications) of that Act.”
- (7) In section 66 (general interpretation of part 2), in subsection (5), after paragraph (i) insert – 15
- “(j) section 73(2)(j) of the Digital Markets, Competition and Consumers Act 2023;”
- (8) In Part 1 of Schedule 1 (powers of seizure to which section 50 of that Act applies), at the end insert – 20
- “73W Digital Markets, Competition and Consumers Act 2023
- Each of the powers of seizure conferred by section 73(2)(i) and (j) of the Digital Markets, Competition and Consumers Act 2023 (seizure of information for the purposes of a breach investigation).” 25
- 76 Application for a warrant**
- (1) An application for a warrant under section 73 must be made –
- (a) in the case of an application to the court, in accordance with rules of court;
- (b) in the case of an application to the Tribunal, in accordance with Tribunal rules. 30
- (2) In Schedule 4 to EA 2002 (tribunal: procedure), in paragraph 10A, in sub-paragraph (1), after “the 1998 Act” insert “or section 73 of the Digital Markets, Competition and Consumers Act 2023”.
- 77 Reports by skilled persons** 35
- (1) The CMA may exercise the powers in this section in relation to a designated undertaking or an undertaking which is the subject of an SMS investigation (in either case, “U”) for the purposes of exercising, or deciding whether to exercise, any of its digital markets functions.

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- (2) The CMA may appoint a skilled person to provide it with a report in a specified form about matters relevant to the purposes for which the powers under this section are or may be exercised (“the relevant matters”).
- (3) Where the CMA makes such an appointment, the CMA must give a notice to U— 5
- (a) confirming the appointment;
 - (b) specifying the relevant matters.
- (4) A notice under subsection (3) may also make provision for U to be liable for payment, directly to the skilled person, of the skilled person’s remuneration and expenses relating to the preparation of the report. 10
- (5) As an alternative to subsection (2), the CMA may give a notice to U—
- (a) requiring U to appoint a skilled person to provide the CMA with a report in such form as may be specified in the notice;
 - (b) specifying the relevant matters to be explored in the report;
 - (c) specifying the date by which the report must be provided. 15
- (6) Where the skilled person is to be appointed by U, U may not make an appointment unless the CMA has approved in writing—
- (a) the identity of the skilled person, and
 - (b) the terms on which they will be appointed, including in relation to their remuneration and expenses. 20
- (7) Subsections (8) to (10) apply in relation to an amount due to a skilled person from U under this section.
- (8) In England and Wales, such an amount is recoverable—
- (a) if the county court so orders, as if it were payable under an order of that court; 25
 - (b) if the High Court so orders, as if it were payable under an order of that court.
- (9) In Scotland, such an amount may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland. 30
- (10) In Northern Ireland, such an amount is recoverable—
- (a) if a county court so orders, as if it were payable under an order of that court;
 - (b) if the High Court so orders, as if it were payable under an order of that court. 35
- (11) References in this section to a skilled person are to a person appearing to the CMA to have the skills necessary to prepare a report about the relevant matters.
- (12) It is the duty of—
- (a) U, and 40

(b) any person connected to (see section 115(3)) U,
to give a skilled person who has been appointed under this section all such
assistance (including access to such premises, equipment, services, information
and persons) as the skilled person may reasonably require to prepare the
report.

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78 Duty to preserve information

(1) A person to whom any of subsections (2), (3), (4) and (5) applies must not,
without reasonable excuse –

(a) destroy, otherwise dispose of, falsify or conceal, or

(b) cause or permit the destruction, disposal, falsification or concealment
of,

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any relevant information.

(2) This subsection applies to a person where the person knows or suspects that
a breach investigation or a PCI investigation is being or is likely to be carried
out in relation to a designated undertaking.

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(3) This subsection applies to a person where the person is connected to (see
section 115(3)) an undertaking that is not a designated undertaking and knows
that the undertaking is the subject of an initial SMS investigation.

(4) This subsection applies to a person where the person is connected to a
designated undertaking and knows that –

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(a) the undertaking is required to produce a compliance report under
section 82, or

(b) the undertaking is the subject of a further SMS investigation.

(5) This subsection applies to a person where the person is connected to an
undertaking and knows or suspects that the CMA is assisting, or is likely to
assist, an overseas regulator in carrying out, in relation to the undertaking,
any of its functions which correspond or are similar to the functions of the
CMA under this Part (see Chapter 1 of Part 5 (provision of investigative
assistance to overseas regulators)).

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(6) For the purposes of this section, relevant information is information which
the person knows or suspects is or would be –

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(a) relevant to the investigation mentioned in subsection (2), (3), (4) or
(5), as the case may be,

(b) used by an undertaking to produce the compliance report, or

(c) relevant to the provision of assistance to the overseas regulator.

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79 Privileged communications

(1) A person may not be required under any provision of this Chapter to produce,
generate or give to the CMA or an officer of the CMA a privileged
communication.

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- (2) Nothing in this Chapter authorises the CMA or an officer of the CMA to produce or take possession of, or take copies of or extracts from, a privileged communication (but see Part 2 of the Criminal Justice and Police Act 2001 for additional powers of seizure).
- (3) A “privileged communication” is a communication— 5
- (a) between a professional legal adviser and their client, or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
- which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege. 10
- (4) In the application of this section to Scotland—
- (a) the reference to the High Court is to be read as a reference to the Court of Session, and
- (b) the reference to legal professional privilege is to be read as a reference to the confidentiality of communications. 15

80 Power of CMA to publish notice of investigative assistance

- (1) Where the CMA assists an overseas regulator in carrying out any of its functions which correspond or are similar to the functions of the CMA under this Part (see Chapter 1 of Part 5 (provision of investigative assistance to overseas regulators)), the CMA may publish a notice of its decision to do so which may, in particular— 20
- (a) identify the overseas regulator concerned;
- (b) summarise the matter in respect of which the assistance is requested;
- (c) identify the undertaking in respect of which the assistance is requested.
- (2) Section 111 does not apply to a notice under subsection (1) to the extent that it includes information other than information mentioned in that subsection. 25

Compliance reports etc

81 Nominated officer

- (1) A designated undertaking must ensure that, at all times when the undertaking is subject to a digital markets requirement, it has an officer with responsibility for carrying out the functions set out in subsection (2) in relation to that digital markets requirement (a “nominated officer”). 30
- (2) The functions are—
- (a) monitoring the undertaking’s compliance with the digital markets requirement and all related requirements; 35
- (b) cooperating with the CMA for the purposes of securing that the undertaking complies with the digital markets requirement and all related requirements to the satisfaction of the CMA;

- (c) securing that the undertaking complies with section 82 (compliance reports).
- (3) A “digital markets requirement” is any of the following –
 - (a) a conduct requirement under section 19;
 - (b) a requirement imposed by virtue of a pro-competition order under section 44; 5
 - (c) a requirement to comply with a commitment given under section 54.
- (4) A “related requirement” is any of the following relating to a digital markets requirement –
 - (a) a requirement imposed by virtue of an enforcement order under section 31 or section 32; 10
 - (b) a requirement imposed by virtue of a final offer order under section 40 or section 41;
 - (c) the requirement to comply with a commitment given under section 36. 15
- (5) A nominated officer must be an individual who the undertaking –
 - (a) considers to be a senior manager of the undertaking, within the meaning of section 68(3), and
 - (b) reasonably expects to be in a position to fulfil the functions set out in subsection (2) in relation to the digital markets requirement. 20
- (6) An undertaking that is required to have a nominated officer under subsection (1) must, as soon as reasonably practicable, inform the CMA of the identity of the nominated officer (including any replacement officer).

82 Compliance reports

- (1) An undertaking that is subject to a digital markets requirement (as defined in section 81(3)) must provide the CMA with a compliance report in relation to that digital markets requirement for each reporting period (as specified in a notice under subsection (3)). 25
- (2) A compliance report is a report setting out –
 - (a) the extent to which the nominated officer considers that the undertaking has complied with the digital markets requirement and each related requirement (see section 81(4)) during the reporting period; 30
 - (b) how the undertaking has complied, and intends to continue to comply, with the digital markets requirement and each related requirement;
 - (c) such other information as the CMA may direct in relation to compliance with the digital markets requirement and each related requirement. 35
- (3) At the same time as imposing a digital markets requirement on an undertaking, the CMA must give a notice to the undertaking specifying –
 - (a) the manner and form of the compliance report to be provided in relation to that digital markets requirement, and 40

- (b) the reporting period for that digital markets requirement.
- (4) The CMA may amend the requirements specified in a notice under subsection (3) by giving a further notice to the undertaking.
- (5) The CMA may give a notice to an undertaking requiring it to publish a compliance report or a summary of a compliance report at such time, and in such manner and form, as the CMA may set out in the notice. 5

CHAPTER 7

ENFORCEMENT AND APPEALS

Civil penalties

- 83 Penalties for failure to comply with competition requirements** 10
- (1) Where the CMA considers that a designated undertaking has, without reasonable excuse, failed to comply with a requirement listed in subsection (2), it may impose a penalty on the undertaking.
 - (2) The requirements are –
 - (a) a requirement imposed by virtue of an enforcement order under section 31 or section 32, 15
 - (b) a requirement imposed by virtue of a final offer order under section 40 (including a requirement imposed in reliance on section 41),
 - (c) a requirement imposed by virtue of a pro-competition order under section 44, and 20
 - (d) the requirement to comply with a commitment given under section 36 or 54.
 - (3) The CMA may impose a penalty on a designated undertaking where the CMA considers that the designated undertaking has, without reasonable excuse, failed to comply with a conduct requirement under section 19. 25
 - (4) The CMA may impose a penalty on a designated undertaking or, where the undertaking is part of a group, the group, where the CMA considers that the designated undertaking or any member of the group has, without reasonable excuse, failed to comply with a requirement in Chapter 5 (mergers).
- 84 Amount of penalties under section 83** 30
- (1) The amount of a penalty imposed on a person under section 83 may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsection (4).
 - (2) The amount of a penalty under section 83(1) must be –
 - (a) a fixed amount, 35
 - (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) The amount of a penalty under section 83(3) or (4) must be a fixed amount.
 - (4) The maximum amounts of a penalty that may be imposed are –
 - (a) in the case of a fixed amount, an amount equal to 10% of the total value of the turnover of the undertaking or, where the undertaking is part of a group, the turnover of the group; 5
 - (b) in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the daily turnover of the undertaking or, where the undertaking is part of a group, the daily turnover of the group; 10
 - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate. 15
 - (5) In subsection (4), references to the total value of the turnover or daily turnover of an undertaking or group are to the total value of the turnover or daily turnover of the undertaking or, as the case may be, group, both inside and outside the United Kingdom.
- 85 Penalties for failure to comply with investigative requirements** 20
- (1) The CMA may impose a penalty on a person where it considers that the person has, without reasonable excuse –
 - (a) failed to comply with a requirement imposed by or under Chapter 6,
 - (b) given information which is false or misleading in a material particular in connection with any function of the CMA under this Part, or 25
 - (c) given information which is false or misleading in a material particular to another person knowing that the information was to be used for the purpose of giving information to the CMA in connection with any function of the CMA under this Part.
 - (2) The CMA may impose a penalty on an individual named as a senior manager under section 68 as well as on the undertaking that names the individual where –
 - (a) the CMA considers that the individual has failed, without reasonable excuse, to prevent a failure or an action by the undertaking of a sort mentioned in subsection (1), and 35
 - (b) the failure or action relates to an information notice in response to which the individual was named as a senior manager.
 - (3) The CMA may impose a penalty on an individual who is appointed by an undertaking to be a nominated officer under section 81 in relation to a digital markets requirement (within the meaning of that section), as well as on the undertaking that appoints the individual, where the CMA considers that the individual has failed, without reasonable excuse, to prevent the undertaking 40

from failing to comply with a requirement in or under section 82 (compliance reports) in relation to that digital markets requirement.

- (4) The CMA may impose a penalty on an individual where it considers that the individual has, without reasonable excuse, obstructed an officer of the CMA acting in the exercise of the officer’s powers under – 5
- (a) section 72, or
 - (b) a warrant issued under section 73.

86 Amount of penalties under section 85

- (1) The amount of a penalty imposed on a person under section 85 may be such amount as the CMA considers appropriate, provided it does not exceed the amounts set out in subsections (3) and (6). 10
- (2) The amount of a penalty under section 85 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. 15
- (3) The maximum amounts of a penalty that may be imposed on a person other than an individual are –
- (a) in the case of a fixed amount, an amount equal to 1% of the total value of the person’s turnover (both inside and outside the United Kingdom); 20
 - (b) in the case of an amount calculated by reference to a daily rate, for each day an amount equal to 5% of the total value of the person’s daily turnover (both inside and outside the United Kingdom);
 - (c) in the case of a combination of a fixed amount and an amount calculated by reference to a daily rate, the amounts mentioned in paragraph (a), in relation to the fixed amount, and paragraph (b), in relation to the amount calculated by reference to a daily rate. 25
- (4) The references in subsection (3) to a person’s turnover are –
- (a) where the person is a designated undertaking that is part of a group, to the turnover of that group; 30
 - (b) where the person is a member of a group and the relevant designated undertaking is part of that group, to the turnover of that group.
- (5) In subsection (4)(b), the “relevant designated undertaking” is the undertaking to which the requirement imposed on the person under Chapter 6 that has given rise to the penalty relates. 35
- (6) The maximum amounts of a penalty that may be imposed on an individual are –
- (a) in the case of a fixed amount, £30,000,
 - (b) in the case of an amount calculated by reference to a daily rate, £15,000 per day. 40

- (7) The Secretary of State may by regulations amend the amounts mentioned in paragraphs (a) and (b) of subsection (6).
- (8) The Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate before making regulations under subsection (7). 5
- (9) Regulations under subsection (7) are subject to the affirmative procedure.

87 Procedure and appeals etc

- (1) Sections 112 (penalties: main procedural requirements), 113 (payments and interest by instalments) and 115 (recovery of penalties) of EA 2002 apply in relation to a penalty imposed under section 83 or 85 as they apply in relation to a penalty imposed under section 110(1) of that Act. 10
- (2) Section 114 of EA 2002 (appeals) applies in relation to –
 - (a) a penalty imposed under section 83(4), and
 - (b) a penalty imposed under section 85 in connection with a function of the CMA under Chapter 5 (mergers), 15as it applies in relation to a penalty imposed under section 110(1) of that Act (and see section 101 of this Act for provision about applications for a review relating to other penalties imposed under section 83(1) or (3) or section 85).
- (3) For the purposes of subsections (1) and (2), sections 112 to 115 of EA 2002 are to be read as if references to “the appropriate authority” were references to “the CMA” only. 20
- (4) For the purposes of subsection (2), section 114(5A) of EA 2002 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.
- (5) For the purposes of subsection (2), section 114(12) of EA 2002 is to be read as if, for paragraph (b), there were substituted – 25
 - (b) “the relevant guidance” means the statement of policy which was most recently published under section 89 of the Digital Markets, Competition and Consumers Act 2023 at the time of the act or omission giving rise to the penalty.” 30

88 Calculation of daily rates and turnover

- (1) 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 EA 2002 (as applied by section 87), and 35
 - (b) unless the CMA determines an earlier day (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of –

-
- (i) the day on which the person first complies with the requirement in question, or
 - (ii) if earlier, where the requirement was imposed in connection with the provision by the CMA of assistance to an overseas regulator (see section 303 (provision of investigative assistance to overseas regulators)), the day on which the overseas regulator no longer requires that assistance. 5
 - (2) The Secretary of State may by regulations make provision for determining the turnover (both inside and outside the United Kingdom) of a person for the purposes of this Chapter. 10
 - (3) The regulations may, among other things—
 - (a) make provision about amounts which are, or are not, to be included in a person’s turnover;
 - (b) make provision about the date or dates by reference to which a person’s turnover is to be determined; 15
 - (c) confer on the CMA the power to determine and make provision about matters specified in the regulations (including the matters mentioned in paragraphs (a) and (b)).
 - (4) Regulations under subsection (2) are subject to the negative procedure.
- 89 Statement of policy on penalties** 20
- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of powers to impose a penalty under sections 83 and 85.
 - (2) The statement must include a statement about the considerations relevant to the determination of—
 - (a) whether to impose a penalty under section 83 or 85; 25
 - (b) the nature and amount of any such penalty.
 - (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
 - (4) In preparing or revising its statement of policy the CMA must consult—
 - (a) the Secretary of State, and 30
 - (b) such other persons as the CMA considers appropriate.
 - (5) A statement of policy, or revised statement, may not be published under this section without the approval of the Secretary of State.
 - (6) Subsection (7) applies where the CMA proposes to impose a penalty on a person. 35
 - (7) The CMA must have regard to the statement of policy most recently published under this section at the time of the act or omission giving rise to the penalty when deciding —
 - (a) whether to impose the penalty, and
 - (b) if so, the amount of the penalty. 40

90 Monetary penalties: criminal proceedings and convictions

- (1) The CMA may not impose a penalty on a person under section 85 in relation to an act or omission which constitutes an offence under section 91, 92 or 93 if the person has, in relation to that act or omission, been found guilty of that offence. 5
- (2) A person may not be found guilty of an offence under section 91, 92 or 93 by virtue of an act or omission if the person has paid a penalty imposed under section 85 in relation to that act or omission.

Offences

91 Destroying or falsifying information 10

- (1) A person (“P”) commits an offence if, having been required to give information to the CMA or any other person under a provision of Chapter 6, P—
 - (a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
 - (b) causes or permits its destruction, disposal, falsification or concealment. 15
- (2) See section 95 for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

92 False or misleading information

- (1) A person (“P”) commits an offence if—
 - (a) P gives information to the CMA in connection with any of the CMA’s digital markets functions, 20
 - (b) the information is false or misleading in a material particular, and
 - (c) P knows that it is or is reckless as to whether it is.
- (2) A person (“P”) commits an offence if P gives information to another person which is false or misleading in a material particular and P—
 - (a) either—
 - (i) knows the information to be false or misleading in a material particular, or
 - (ii) is reckless as to whether the information is false or misleading in a material particular, and 30
 - (b) knows that the information will be given to the CMA in connection with any of its digital markets functions.
- (3) See section 95 for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

93 Obstructing an officer 35

- (1) A person (“P”) commits an offence if P intentionally obstructs an officer of the CMA acting in the exercise of the officer’s powers under—

- (a) section 72, or
- (b) a warrant issued under section 73.

- (2) See section 95 for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

94 Offences by officers of a body corporate etc 5

- (1) If an offence under section 91, 92 or 93 committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to neglect on the part of an officer of the body corporate, 10
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “officer” includes –
- (a) anyone purporting to act as an officer, 15
 - (b) an individual named as a senior manager in response to an information notice (see section 68), and
 - (c) a nominated officer appointed under section 81.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were an officer of the body corporate. 20
- (4) If an offence under section 91, 92 or 93 committed by a partnership in Scotland is proved –
- (a) to have been committed with the consent or connivance of a partner, or 25
 - (b) to be attributable to neglect on the partner’s part,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In subsection (4), “partner” includes a person purporting to act as a partner. 30
- (6) See section 95 for provision restricting the application of this section in relation to acts done by a person who is outside the United Kingdom.

95 Offences: limits on extra-territorial jurisdiction

- (1) A person does not commit an offence under section 91, 92 or 93 (including as those sections are applied by section 94) by virtue of an act done when the person is outside the United Kingdom unless one or more of the following applies at the time of the act – 35
- (a) the person is a United Kingdom national;

- (b) the person is an individual who is habitually resident in the United Kingdom;
 - (c) the person is a body incorporated under the law of any part of the United Kingdom.
- (2) In subsection (1), “United Kingdom national” means – 5
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who is a British subject under the British Nationality Act 1981;
 - (c) a British protected person within the meaning of that Act. 10

96 Sentences

- A person guilty of an offence under section 91, 92 or 93 is liable –
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; 15
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Further enforcement provisions etc

97 Director disqualification

- (1) In the Company Directors Disqualification Act 1986, in section 9A (competition disqualification order), in subsection (4) – 20
- (a) in the words before paragraph (a), for “either” substitute “any”;
 - (b) at the end insert –
 - “(e) a requirement imposed by or under Chapter 3 of Part 1 of the Digital Markets, Competition and Consumers Act 2023 (undertakings with strategic market status in respect of a digital activity: conduct requirements); 25
 - (f) a requirement imposed by or under Chapter 4 of Part 1 of that Act (pro-competition interventions).”
- (2) In the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)), in Article 13A (competition disqualification order), in paragraph (4) – 30
- (a) in the words before paragraph (a), for “either” substitute “any”;
 - (b) at the end insert –
 - “(e) a requirement imposed by or under Chapter 3 of Part 1 of the Digital Markets, Competition and Consumers Act 2023 (undertakings with strategic market status in respect of a digital activity: conduct requirements); 35

- (f) a requirement imposed by or under Chapter 4 of Part 1 of that Act (pro-competition interventions).”

98 Enforcement of requirements

- (1) If a person fails, without reasonable excuse, to comply with a requirement mentioned in subsection (2) (a “subsection (2) requirement”), the CMA may apply to the court for an order – 5
- (a) requiring the person to comply with the subsection (2) requirement within a time specified in the court’s order, or
 - (b) if the subsection (2) requirement related to anything to be done in the management or administration of an undertaking, requiring the undertaking, or any of its officers, members or partners, to do it. 10
- (2) The requirements are –
- (a) a requirement imposed by virtue of an enforcement order (see section 31 and section 32);
 - (b) a requirement imposed by virtue of a final offer order (see section 40 and section 41); 15
 - (c) a requirement imposed by virtue of a pro-competition order (see section 44);
 - (d) a requirement to comply with a commitment given under section 36 or 54. 20
- (3) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by –
- (a) the undertaking that failed to comply with the subsection (2) requirement, or
 - (b) any officer of the undertaking who is responsible for the failure. 25
- (4) In the application of subsection (3) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.
- (5) In this section, references to an “officer”, “member” or “partner” of an undertaking are to an officer, member or partner of a body corporate or, as the case may be, partnership, that is, or is comprised in, the undertaking. 30

99 Rights to enforce requirements of this Part

- (1) A relevant requirement is to be treated as a duty owed by the person that is subject to the requirement to any other person (“P”) who may be affected by a breach of the requirement.
- (2) Where a breach of a relevant requirement causes P to sustain loss or damage, P may bring civil proceedings against the person that has breached the requirement before the appropriate court or the Tribunal for damages, an injunction or interdict or any other appropriate relief or remedy. 35
- (3) Subsections (1) and (2) are subject to the defences and other incidents applying to actions for breach of statutory duty. 40

- (4) For the purposes of this section and section 100, a relevant requirement is—
 - (a) a conduct requirement under section 19;
 - (b) a requirement imposed by virtue of a pro-competition order under section 44;
 - (c) a requirement to comply with a commitment given under section 36 or 54. 5

- (5) For the purposes of this section and section 100, the “appropriate court” means—
 - (a) in relation to England and Wales or Northern Ireland, the High Court, and 10
 - (b) in relation to Scotland, the Court of Session or a sheriff court of any sheriffdom.

- (6) In Schedule 4 to EA 2002 (tribunal: procedure), in paragraph 1A, in sub-paragraph (1) after “the 1998 Act” insert “or section 99 of the Digital Markets, Competition and Consumers Act 2023”. 15

100 Treatment of CMA breach decisions etc

- (1) The appropriate court (see section 99) and the Tribunal are bound by a CMA breach decision once it has become final.

- (2) A CMA breach decision becomes final—
 - (a) when the time for appealing against the decision expires without an appeal having been brought, or 20
 - (b) where an appeal has been brought against the decision, when—
 - (i) the appeal and any further appeal in relation to the decision has been decided or has otherwise ended, and
 - (ii) the time for appealing against the result of the appeal or further appeal has expired without another appeal having been brought. 25

- (3) This section applies to the extent that the appropriate court or the Tribunal would not otherwise be bound by the CMA breach decision in question.

- (4) In this section, a “CMA breach decision” is a decision by the CMA in accordance with this Part that a person has breached a relevant requirement (as defined in section 99). 30

- (5) Rules of court or Tribunal rules may make provision in respect of assistance to be given by the CMA to the appropriate court or the Tribunal in proceedings brought otherwise than by the CMA in respect of a breach, or an alleged breach, of a relevant requirement. 35

Applications for review

101 Applications for review etc

- (1) A person with a sufficient interest in any decision to which subsection (2) applies may apply to the Tribunal in accordance with Tribunal rules for a review of that decision. 5
- (2) This subsection applies to any decision made by the CMA in connection with its digital markets functions (including a decision not to exercise a function) apart from—
 - (a) a decision made by the CMA in connection with its functions under Chapter 5 (but see section 64); 10
 - (b) a decision about the imposition of a penalty under section 83(1) or (3) or section 85 (but see subsection (4) and section 87(2));
 - (c) a decision about the imposition of a penalty under section 83(4) (but see section 87(2)).
- (3) The making of an application under subsection (1) does not suspend the effect of the decision to which the application relates except so far as a direction to the contrary is given by the Tribunal. 15
- (4) A person on whom the CMA imposes a penalty under section 83(1) or (3), or under section 85 in connection with a function of the CMA other than a function under Chapter 5 (mergers), may apply to the Tribunal in accordance with Tribunal rules for a review of the CMA’s decision—
 - (a) to impose the penalty,
 - (b) about the amount of the penalty, or
 - (c) about the date by which the penalty is required to be paid or the different dates by which portions of the penalty are required to be paid. 25
- (5) Where an application is made under subsection (4)—
 - (a) the penalty is not required to be paid until the application has been finally determined, withdrawn or otherwise dealt with, and
 - (b) the CMA may agree to reduce the amount of the penalty in settlement of the application. 30
- (6) In determining an application under this section, the Tribunal must apply the same principles as would be applied—
 - (a) in the case of proceedings in England and Wales or Northern Ireland, by the High Court in determining proceedings on judicial review; 35
 - (b) in the case of proceedings in Scotland, by the Court of Session on an application to the supervisory jurisdiction of that Court.
- (7) The Tribunal may—
 - (a) dismiss the application or quash the whole or part of the decision to which it relates, and 40

- (b) where it quashes the whole or part of that decision, refer the matter back to the CMA with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.
- (8) An appeal lies on any point of law arising from a decision of the Tribunal under this section to the appropriate court. 5
- (9) An appeal under subsection (8) requires the permission of the Tribunal or the appropriate court.
- (10) In this section, “the appropriate court” means –
 - (a) in relation to England and Wales or Northern Ireland, the Court of Appeal, or 10
 - (b) in relation to Scotland, the Court of Session.

CHAPTER 8

ADMINISTRATION ETC

Administration

- 102 Extension etc of periods** 15
- (1) The CMA may publish a notice extending a relevant investigation period or a final offer period by a period of up to 3 months where it considers that there are special reasons for doing so.
 - (2) A notice under subsection (1) must specify how long the extension is for.
 - (3) The CMA may also publish a notice extending a relevant investigation period or a final offer period where it considers that – 20
 - (a) in relation to a relevant investigation period –
 - (i) a person has failed to comply with any requirement of a notice under section 67 (power to require information) or under section 70 (power to interview) which was given in relation to an SMS investigation, a conduct investigation or a PCI investigation, and 25
 - (ii) the failure is preventing the CMA from properly discharging the digital markets functions to which the investigation relates, or 30
 - (b) in relation to a final offer period –
 - (i) a person has failed to comply with any requirement of a notice under section 67, and
 - (ii) the failure is preventing the CMA from properly discharging any of its functions under sections 38 to 43 (final offer mechanism). 35
 - (4) An extension under subsection (3) is for the period –
 - (a) beginning with the day on which it comes into force, and

-
- (b) ending with the day on which the CMA publishes a notice of its decision to end the extension.
- (5) The CMA must publish a notice under subsection (4)(b) where the person who had failed to comply as mentioned in subsection (3) gives the information in question to the CMA or, as the case may be, answers questions and provides explanations to the satisfaction of the CMA. 5
- (6) An extension under subsection (1) or (3) begins with the day on which the notice under subsection (1) or (3), as the case may be, is published.
- (7) Where—
- (a) the CMA extends an SMS investigation period relating to a further SMS investigation under subsection (1) or (3), 10
- (b) the extension means that the SMS investigation period would (apart from this subsection) continue after the end of the designation period for the existing designation which is the subject of the further SMS investigation, and 15
- (c) in the case of an extension under subsection (3), the person who had failed to comply is, or is connected to, the designated undertaking, the designation period for the existing designation is extended until the end of the SMS investigation period.
- (8) In this section and in section 103 references to a “relevant investigation period” are to— 20
- (a) an SMS investigation period;
- (b) a conduct investigation period;
- (c) a PCI investigation period.
- 103 Extensions: supplementary** 25
- (1) A period may be extended under both section 102(1) and (3).
- (2) No more than one extension is possible under section 102(1).
- (3) Where a relevant investigation period or a final offer period is extended or further extended under section 102(1) or (3), the period as extended or, as the case may be, further extended is, subject to subsection (4), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time). 30
- (4) Where—
- (a) a relevant investigation period or a final offer period is further extended under section 102(3), and 35
- (b) the further extension overlaps with a previous extension under section 102(3),
- the period of overlap is to be disregarded in calculating the period of the further extension.

104 Exercise and delegation of functions

- (1) The CMA may make a reference to the CMA chair for the constitution of a group under Schedule 4 to ERRRA 2013 in respect of any non-reserved digital markets function.
- (2) A reference under this section must specify the non-reserved digital markets function in respect of which the reference is made (“the referred function”). 5
- (3) A CMA group constituted under ERRRA 2013 for the purposes of a reference under this section must carry out the referred function.
- (4) For the purposes of this section, a “non-reserved digital markets function” is any digital markets function other than a digital markets function that the CMA Board may not delegate – 10
 - (a) under paragraph 29(1) of Schedule 4 to ERRRA 2013, as a result of paragraph 29(2) of that Schedule as it has effect from time to time, or
 - (b) under paragraph 29(1)(a) of that Schedule, as a result of paragraph 29(2A) of that Schedule as it has effect from time to time. 15
- (5) In subsection (1), “CMA chair” means the person appointed under paragraph 1(1)(a) of Schedule 4 to ERRRA 2013.
- (6) In Schedule 4 to ERRRA 2013 (the Competition and Markets Authority), paragraph 29 (delegation) is amended as follows.
- (7) In sub-paragraph (2) (functions which cannot be delegated), at the end insert – 20
 - “(g) whether to begin an initial SMS investigation under section 9 of the Digital Markets, Competition and Consumers Act 2023 (“the 2023 Act”);
 - (h) whether to begin a further SMS investigation under section 10 of the 2023 Act; 25
 - (i) whether to begin a PCI investigation under section 45 of the 2023 Act.”
- (8) After sub-paragraph (2) insert –
 - “(2A) Sub-paragraph (1)(a) does not apply to the functions of deciding –
 - (a) whether to make a designation under section 2 of the 2023 Act; 30
 - (b) whether to impose a conduct requirement under section 19 of the 2023 Act;
 - (c) whether to revoke a conduct requirement under section 22 of the 2023 Act; 35
 - (d) whether to make, and the form of, a pro-competition intervention under section 44 of the 2023 Act;
 - (e) the contents of a notice under section 48 of the 2023 Act (notice of decision on pro-competition intervention);
 - (f) whether to replace a pro-competition order under section 50 of the 2023 Act; 40

-
- (g) whether to revoke a pro-competition order under section 51 of the 2023 Act.
- (2B) A committee or sub-committee of the CMA Board may not be authorised to carry out any of the functions listed in sub-paragraph (2A) unless – 5
- (a) the committee or sub-committee includes –
- (i) at least two members of the Board who are not members of the CMA’s staff, or
- (ii) the chair and at least one member of the Board who is not a member of the CMA’s staff, and 10
- (b) at least half of the members of the committee or sub-committee are –
- (i) members of the Board who are not members of the CMA’s staff, or
- (ii) members of the CMA panel.” 15
- (9) After sub-paragraph (3) insert –
- “(4) The Secretary of State may by regulations made by statutory instrument amend sub-paragraphs (2) or (2A) so as to add or remove functions of the CMA under Part 1 of the 2023 Act.
- (5) The regulations may make incidental, transitional or saving provision. 20
- (6) A statutory instrument containing regulations under sub-paragraph (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- 105 Notices under this Part** 25
- (1) This section applies in relation to a notice required or authorised under this Part to be given to a person by the CMA.
- (2) A notice may be given by – 30
- (a) delivering it to the person,
- (b) leaving it at the person’s proper address,
- (c) sending it by post to the person at that address, or
- (d) sending it to the person by email to their email address.
- (3) A notice to a body corporate may be given to any officer of that body.
- (4) A notice to a partnership may be given to any partner or a person who has the control or management of the partnership business. 35
- (5) A notice to an unincorporated body or association (other than a partnership) may be given to any member of the governing body of the association.
- (6) A person’s proper address is –

- (a) in a case where the person has specified an address as one at which the person, or someone acting on the person’s behalf, will accept service of notices or other documents, that address;
 - (b) in any other case, the address determined in accordance with subsection (7). 5
- (7) A person’s proper address is (if subsection (6)(a) does not apply) –
 - (a) in the case of a body corporate, its registered or principal office;
 - (b) in the case of a partnership, the principal office of the partnership;
 - (c) in the case of an unincorporated body or association, the principal office of the body or association; 10
 - (d) in a case where none of paragraphs (a) to (c) apply, any address at which the person giving the notice believes, on reasonable grounds, that the notice will come to the attention of the person.
- (8) A person’s email address is –
 - (a) any email address published by for the time being by that person as an address for contacting that person, or 15
 - (b) if there is no such published address, any email address by means of which the person giving the notice believes, on reasonable grounds, that the notice will come to the attention of that person.
- (9) In the case of – 20
 - (a) a body corporate registered outside the United Kingdom,
 - (b) a partnership carrying on business outside the United Kingdom, or
 - (c) any other body with offices outside the United Kingdom,references to its principal office include references to its principal office in the United Kingdom or, if it has no principal office in the United Kingdom, any place in the United Kingdom where it carries on business or conducts activities. 25
- (10) This section does not limit other lawful means of giving a notice under this Part.

Regulatory coordination and information sharing 30

106 Coordination with relevant regulators

- (1) The CMA must consult the FCA on a proposal to exercise a regulatory digital markets function in respect of a matter where the CMA considers the matter is a matter in relation to which the CMA and the FCA may have concurrent functions (see sections 234I (functions under Part 4 of EA 2002) and 234J (functions under CA 1998) of the Financial Services and Markets Act 2000 (as amended by this Act) (“FSMA”)). 35
- (2) The CMA must consult OFCOM on a proposal to exercise a regulatory digital markets function in respect of a matter where the CMA considers the matter is a matter in relation to which the CMA and OFCOM may have concurrent functions (see sections 370 (functions under Part 4 of EA 2002) and 371 40

(functions under CA 1998) of the Communications Act 2003 (as amended by this Act)).

- (3) The CMA must consult the Information Commissioner on a proposal to exercise a regulatory digital markets function in a manner that the CMA considers is likely to have a material adverse effect on the ability of the Information Commissioner to exercise functions under – 5
- (a) the data protection legislation,
 - (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426), or
 - (c) the Network and Information Systems Regulations 2018 (S.I. 2018/506). 10
- (4) The CMA must consult the Bank of England on a proposal to exercise a regulatory digital markets function in a manner that the CMA considers is likely to have a material adverse effect on the ability of the Bank of England to advance the Financial Stability Objective as defined in section 2A of the Bank of England Act 1998. 15
- (5) The CMA must consult the PRA on a proposal to exercise a regulatory digital markets function in a manner that the CMA considers is likely to have a material adverse effect on the ability of the PRA to advance –
- (a) its general objective under section 2B of FSMA, or
 - (b) its insurance objective under section 2C of FSMA. 20
- (6) The duties in subsections (1) to (5) apply only to the extent that the CMA considers that compliance does not impose a burden on it that outweighs the benefits of compliance.
- (7) For the purposes of this section, “the data protection legislation” has the meaning given by section 3(9) of the Data Protection Act 2018. 25

107 Recommendations to the CMA

- (1) The FCA or OFCOM may make a recommendation to the CMA where they consider that the CMA should exercise a regulatory digital markets function in relation to an undertaking and a digital activity.
- (2) A recommendation under subsection (1) must – 30
- (a) describe the undertaking, the digital activity, and the regulatory digital markets function to which it relates, and
 - (b) be given to the CMA in writing.
- (3) A recommendation under this section must be accompanied by a statement of reasons for the recommendation. 35
- (4) Within the period of 90 days beginning with the day on which it receives a recommendation, the CMA must –
- (a) give notice to the regulator that made the recommendation –
 - (i) setting out the action that the CMA has taken or intends to take in response to the recommendation, and 40

- (ii) including the reasons for its decision, and
- (b) publish a summary of the notice.

108 Information sharing

- (1) In Schedule 14 to EA 2002 (provisions about disclosure of information) at the appropriate place insert – 5
“Part 1 of the Digital Markets, Competition and Consumers Act 2023.”
- (2) In Schedule 15 to EA 2002 (provisions about disclosure of information) at the appropriate places insert –
 - “Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426).”; 10
 - “Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.”;
 - “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation).”; 15
 - “Part 4 of the Network and Information Systems Regulations 2018 (S.I. 2018/506).”; 20
 - “Data Protection Act 2018.”;
 - “Part 1 of the Digital Markets, Competition and Consumers Act 2023.”
- (3) In section 393 of the Communications Act 2003 (general restrictions on disclosure of information), in subsection (5), after paragraph (r) insert –
 - “(s) Part 1 of the Digital Markets, Competition and Consumers Act 2023.” 25

Miscellaneous

109 Power to charge levy

- (1) *The CMA may require an undertaking to pay it a levy in respect of a chargeable year during the whole or part of which the undertaking is a designated undertaking.* 30
- (2) The amount of the levy is to be calculated in accordance with rules made for the purposes of this section by the CMA (“the levy rules”).
- (3) The CMA may amend or replace the levy rules.
- (4) The levy rules must –
 - (a) secure that the aggregate amount payable in respect of a chargeable year is not to exceed the costs which the CMA incurs in exercising its digital markets functions during that year; 35

-
- (b) make provision about how the aggregate amount payable in respect of a chargeable year is to be divided between the undertakings which are designated undertakings for the whole or part of that year;
 - (c) secure that where an undertaking is a designated undertaking for only part of a chargeable year, the amount of the levy payable by that undertaking in respect of that chargeable year is proportionately reduced; 5
 - (d) set out how the CMA is to estimate the costs which it expects to incur in exercising its digital markets functions during a chargeable year;
 - (e) set out how the CMA is to calculate the costs which it actually incurs in exercising its digital markets functions during a chargeable year; 10
 - (f) make provision about the repayment or crediting of any amounts of levy paid in respect of a chargeable year on the basis of the CMA’s estimate of the costs it would incur in exercising its digital markets functions during that year where the CMA’s estimated costs exceed the CMA’s actual costs of exercising those functions during that year; 15
 - (g) secure that any repayment or crediting in respect of a chargeable year in accordance with provision made under paragraph (f), so far as relating to an undertaking, is in proportion to the amount paid by that undertaking in respect of that year; 20
 - (h) make provision about the charging of amounts of levy in respect of a chargeable year where the CMA’s actual costs of exercising its digital markets functions during that year exceed the costs which the CMA estimated it would incur;
 - (i) secure that, where an undertaking is required to pay an amount of levy in respect of a chargeable year in accordance with provision made under paragraph (h), the amount which the undertaking is required to pay is in proportion to the amount already paid by the undertaking in respect of that year; 25
 - (j) make provision about the administration of the levy. 30
 - (5) The CMA must consult such persons as it considers appropriate before making the levy rules, including any amended or replacement levy rules (see section 112).
 - (6) The consultation must include a draft of the proposed levy rules.
 - (7) The CMA must, at the same time as beginning consultation under subsection (5), arrange for the draft of the proposed levy rules to be laid before Parliament. 35
 - (8) The CMA must publish the levy rules, including amended or replacement rules.
 - (9) An amount payable by an undertaking in accordance with this section and the levy rules is recoverable as a civil debt due to the CMA. 40
 - (10) For the purposes of this section—
 - (a) a chargeable year is a period of 12 months ending with 31 March;

- (b) the CMA’s costs of exercising its digital markets functions do not include costs incurred by the CMA for the purposes of litigation.

110 Extra-territorial application

- (1) Unless otherwise stated, this Part applies in relation to persons outside the United Kingdom. 5
- (2) A power to give a notice to a person outside the United Kingdom by virtue of this Part is exercisable only if the person is within subsection (3), (4) or (5).
- (3) A person is within this subsection if the person is, or is part of— 10
 - (a) a designated undertaking;
 - (b) an undertaking that is the subject of a digital markets investigation.
- (4) A person is within this subsection if the person is an individual—
 - (a) who is named as a senior manager under section 68 or appointed as a nominated officer under section 81, and
 - (b) on whom the CMA has imposed a penalty under section 85(2) or 85(3), 15
as the case may be.
- (5) A person is within this subsection if the person—
 - (a) is a United Kingdom national,
 - (b) is an individual who is habitually resident in the United Kingdom,
 - (c) is a body incorporated under the law of any part of the United 20
Kingdom, or
 - (d) carries on business in the United Kingdom.
- (6) In subsection (5) “United Kingdom national” means—
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; 25
 - (b) a person who is a British subject under the British Nationality Act 1981;
 - (c) a British protected person within the meaning of that Act.
- (7) Nothing in this section is to be taken to limit any other power of the CMA to give a notice to a person outside the United Kingdom. 30

111 Defamation

For the purposes of the law relating to defamation, absolute privilege attaches to anything done by the CMA in the exercise of any of its functions under this Part.

112 Consultation and publication of statements 35

- (1) The CMA must comply with any duty to consult under this Part in such manner as it considers practicable, having regard in particular to—

- (a) any need to keep information confidential, and
 - (b) the timetable for making a final decision or taking any action following the consultation.
- (2) Any consultation which the CMA carries out under this Part must include—
- (a) reasons for the finding, decision or proposal to which the consultation relates, and 5
 - (b) such other information as the CMA considers necessary to allow a proper understanding of those reasons (subject to subsection (1)(b)).
- (3) The CMA must comply with any duty to publish a notice or any other document under this Part by publishing the notice or document online, having regard to any need to keep information confidential. 10

113 Guidance

- (1) The CMA must publish guidance on how it will exercise its functions under this Part.
- (2) The CMA may revise or replace guidance published under this section. 15
- (3) The CMA must publish any revised or replacement guidance.
- (4) The CMA must consult such persons as it considers appropriate before publishing guidance (including any revised or replacement guidance) under this section.

Interpretation 20

114 Groups

- (1) This section makes provision about groups for the purposes of this Part.
- (2) An undertaking is part of a group if one or more bodies corporate which are comprised in the undertaking are members of the same group as one or more other bodies corporate. 25
- (3) For the purposes of this Part, two bodies corporate are members of the same group if—
 - (a) one is the subsidiary of the other, or
 - (b) both are subsidiaries of the same body corporate.

115 General interpretation 30

- (1) In this Part—
 - “breach investigation” means an investigation (including a conduct investigation) into whether a designated undertaking has breached or is breaching a requirement imposed by or under this Part;
 - “conduct investigation” has the meaning given by section 26(1); 35
 - “conduct investigation notice” has the meaning given by section 26(3);

- “conduct investigation period” has the meaning given by section 30(2);
- “conduct requirements” has the meaning given by section 19(3);
- “consumer” has the meaning given by section 129(1) of EA 2002;
- “the court”, except where otherwise stated, means –
- (a) in relation to England and Wales or Northern Ireland, the High Court, and 5
 - (b) in relation to Scotland, the Court of Session;
- “customer” includes a customer who is not a consumer;
- “designated undertaking” means an undertaking which the CMA has designated as having SMS in respect of a digital activity; 10
- “designation” means the designation of an undertaking as having SMS in respect of a relevant digital activity;
- “designation period” has the meaning given by section 15(2)(e);
- “digital activity” has the meaning given by section 3(1);
- “digital content” has the meaning given by section 311; 15
- “digital markets functions” means –
- (a) the functions that the CMA has under this Part, and
 - (b) the CMA’s power to do anything that is calculated to facilitate, or is conducive or incidental to, the performance of those functions (see paragraph 20 of Schedule 4 to ERRA 2013 (additional powers)); 20
- “digital markets investigation” means –
- (a) an SMS investigation;
 - (b) a breach investigation (including a conduct investigation);
 - (c) a PCI investigation; 25
- the “digital markets investigation powers” are the powers that the CMA has under –
- (a) section 67 (power to require information);
 - (b) section 69 (power of access);
 - (c) section 70 (power to interview); 30
 - (d) section 72 (power to enter business premises without a warrant);
 - (e) section 73 (power to enter premises under a warrant);
 - (f) section 77 (reports by skilled persons);
- “enforcement order” has the meaning given by section 31(1); 35
- “the FCA” means the Financial Conduct Authority;
- “final offer initiation notice” has the meaning given by section 39(1);
- “final offer order” has the meaning given by section 40(2);
- “final offer payment terms” has the meaning given by section 38(1);
- “final offer period” has the meaning given by section 40(3); 40
- “further SMS investigation” has the meaning given by section 10(3);
- “information” includes –

-
- (a) information in the form of a document, whether in draft or final form;
 - (b) information in any other form;
 - (c) data, code, algorithms, estimates, forecasts, returns and explanations; 5
- “information notice” has the meaning given by section 67(2);
- “initial SMS investigation” has the meaning given by section 9(2);
- “interim enforcement order” has the meaning given by section 32(1);
- “OFCOM” means the Office of Communications;
- “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body; 10
- “PCI” stands for “pro-competition intervention”;
- “PCI decision” has the meaning given by section 47(1);
- “PCI investigation” has the meaning given by section 45(1);
- “PCI investigation notice” has the meaning given by section 46(1); 15
- “PCI investigation period” has the meaning given by section 48(1);
- “person”, in addition to the meaning given by the Interpretation Act 1978, includes an undertaking;
- “the PRA” means the Prudential Regulation Authority;
- “pro-competition order” has the meaning given by section 44(3)(a); 20
- “product” means –
- (a) goods;
 - (b) services;
 - (c) digital content;
- the “regulatory digital markets functions” are – 25
- (a) the power to open an SMS investigation under section 9(1) (initial SMS investigation) or section 10(1) or (2) (further SMS investigation);
 - (b) the power to designate an undertaking as having SMS under Chapter 2 (strategic market status); 30
 - (c) the power to revoke a designation under Chapter 2 (strategic market status);
 - (d) the power to impose or revoke conduct requirements under Chapter 3 (conduct requirements);
 - (e) the power to make, replace or revoke PCIs under Chapter 4 (pro-competition interventions); 35
- “relevant digital activity” in relation to a designated undertaking means a digital activity in respect of which the undertaking has been designated as having SMS;
- the “relevant service or digital content” in relation to a digital activity means the service or digital content the provision of which constitutes (together with anything else done for the purposes of that provision) the digital activity; 40
- “SMS” stands for “strategic market status”;

- “SMS conditions” are the conditions set out in section 2(2);
- “SMS decision notice” has the meaning given by section 14(2);
- “SMS investigation” means an initial SMS investigation and a further SMS investigation;
- “SMS investigation notice” has the meaning given by section 11(1); 5
- “SMS investigation period” has the meaning given by section 14(2);
- “submission date” has the meaning given by section 39(2)(d);
- “subsidiary” has the meaning given by section 1159 of the Companies Act 2006;
- “the Tribunal” means the Competition Appeal Tribunal; 10
- “Tribunal rules” means rules under section 15 of EA 2002;
- “the turnover condition” has the meaning given by section 2(3);
- “UK user” and “UK customer” mean any user or, as the case may be, customer who it is reasonable to assume –
- (a) in the case of an individual, is normally in the United Kingdom, 15
and
- (b) in any other case, is established in the United Kingdom;
- “undertaking” has the same meaning as it has for the purposes of Part 1 of CA 1998 (competition: agreements, abuse of dominant position etc); 20
- “user” includes any person, legal or natural, and, in relation to a digital activity, means any user of the relevant service or digital content.
- (2) In this Part –
- (a) references to “giving notice” or “giving a notice” are to giving notice or giving a notice in writing; 25
- (b) references to “using” include, in relation to a service or digital content, interacting, or carrying out activities that interact, in any way, directly or indirectly, with the service or digital content.
- (3) In this Part, a person is “connected to” an undertaking if that person –
- (a) is concerned in the management or control of the undertaking, 30
- (b) is employed by the undertaking, or
- (c) works for the undertaking in any other capacity.

PART 2

COMPETITION

CHAPTER 1

ANTI-TRUST

The Chapter 1 prohibition

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116 Removal of requirement for agreements etc to be implemented in the UK

(1) In Chapter 1 of Part 1 of CA 1998 (agreements), section 2 (agreements etc preventing, restricting or distorting competition) is amended as follows.

(2) For subsection (1) substitute –

“(1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom and which –

(a) in the case of agreements, decisions or practices implemented, or intended to be implemented in the United Kingdom, may affect trade in the United Kingdom, or

(b) in any other case, are likely to have an immediate, substantial and foreseeable effect on trade within the United Kingdom, are prohibited unless they are exempt in accordance with the provisions of this Part.”

(3) Omit subsection (3).

(4) The amendments made by this section do not have effect in relation to agreements between undertakings (within the meaning of CA 1998) made before the coming into force of this section.

(5) Subsection (5) of section 2 of CA 1998 applies for the purposes of subsection (4) as it applies for the purposes of Part 1 of that Act.

Investigations

117 Duty to preserve documents relevant to investigations

(1) Chapter 3 of Part 1 of CA 1998 (competition: investigation and enforcement) is amended as follows.

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- (2) After section 25A insert—

“25B Duty to preserve documents relevant to investigations

- (1) Subsection (2) applies where a person knows or suspects that an investigation by the CMA under section 25 is being or is likely to be carried out. 5
- (2) The person must not—
- (a) falsify, conceal, destroy or otherwise dispose of, or
 - (b) cause or permit the falsification, concealment, destruction or disposal of,
- a document which the person knows or suspects is or would be relevant to the investigation. 10
- (3) In this section, the reference to concealing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.”
- (3) In section 40ZE (enforcement of requirements: imposition of penalties) (inserted by paragraph 8 of Schedule 8), in subsection (1), in paragraph (a), after “imposed on the person” insert “by section 25B or”. 15

118 Production of information authorised by warrant

- (1) Section 28 of CA 1998 (power to enter business premises under a warrant) is amended as follows. 20
- (2) In subsection (1)—
- (a) in paragraph (a), in the words before sub-paragraph (i), after “there are on” insert “or accessible from”;
 - (b) in paragraph (b), in sub-paragraph (i), after “there are on” insert “or accessible from”; 25
 - (c) in paragraph (c), after “there are on” insert “or accessible from”.
- (3) In subsection (2)—
- (a) in paragraph (f) omit “and which the named officer considers relates to any matter relevant to the investigation,”;
 - (b) after that paragraph insert— 30
- “(g) to operate any equipment found on the premises for the purposes of producing such information in such a form;
 - (h) to require any person on the premises to give the named officer any assistance the named officer may reasonably require (including for the purposes of paragraphs (f) and (g)); 35
 - (i) to take copies of, or take possession of, anything produced in accordance with paragraph (f) or (g) which

- the named officer considers relates to any matter relevant to the investigation.”
- (4) Section 28A of CA 1998 (power to enter domestic premises under a warrant) is amended as follows.
- (5) In subsection (1)– 5
- (a) in paragraph (a), in the words before sub-paragraph (i), after “there are on” insert “or accessible from”;
- (b) in paragraph (b), in sub-paragraph (i), after “there are on” insert “or accessible from”.
- (6) In subsection (2)– 10
- (a) in paragraph (f) omit “and which the named officer considers relates to any matter relevant to the investigation,”;
- (b) after that paragraph insert–
- “(g) to operate any equipment found on the premises for the purposes of producing such information in such a form; 15
- (h) to require any person on the premises to give the named officer any assistance the named officer may reasonably require (including for the purposes of paragraphs (f) and (g)); 20
- (i) to take copies of, or take possession of, anything produced in accordance with paragraph (f) or (g) which the named officer considers relates to any matter relevant to the investigation.”
- (7) In section 30 of CA 1998 (privileged communications), after subsection (1) insert– 25
- “(1A) Nothing in section 28 or 28A authorises an officer to produce or take possession of, or make copies of or take extracts from, anything which, by virtue of subsection (1), a person could not be required to produce or disclose under this Part.” 30

119 Additional powers of seizure from domestic premises

- (1) Part 2 of the Criminal Justice and Police Act 2001 (powers of seizure) is amended as follows.
- (2) In section 50 (additional powers of seizure from premises), in subsection (6), after “section 28(2)(b)” insert “or 28A(2)(b)”. 35
- (3) In section 57(1) (retention of seized items), in paragraph (n), for “section 28(7)” substitute “sections 28(7) and 28A(8)”.
- (4) In section 63(2) (powers of seizure: copies), in paragraph (h), after “section 28(2)(f)” insert “or (g) or 28A(2)(f) or (g)”.

- (5) In section 64(3) (meaning of “appropriate judicial authority”), in paragraph (a)(iii), for “section 28(2)” substitute “sections 28(2) and 28A(2)”.
- (6) In section 65(2) (meaning of “legal privilege”), in paragraph (a)–
 - (a) for “power” substitute “powers”;
 - (b) after “section 28(2)” insert “or 28A(2)”. 5
- (7) In section 66(5) (general interpretation of Part 2), in paragraph (h), for “section 28(2)(c)” substitute “sections 28(2)(c) and 28A(2)(c)”.
- (8) In Part 1 of Schedule 1 (powers of seizure: powers to which section 50 applies), in paragraph 67 (the Competition Act 1998), for “section 28(2)” substitute “sections 28(2) and 28A(2)”. 10

Interim measures

120 Standard of review on appeals against interim measures directions

- (1) In section 46 of CA 1998 (appealable decisions), in subsection (3) –
 - (a) after paragraph (h) insert –
 - “(ha) to make directions under section 35, 15
 - (hb) not to make directions under section 35,”;
 - (b) in the words after paragraph (i), for “, 33 or 35” substitute “or 33”.
- (2) Schedule 8 to CA 1998 (appeals) is amended as follows.
- (3) In paragraph 3 (decisions of the tribunal: merits-based appeals), in sub-paragraph (A1) – 20
 - (a) in paragraph (a), for “or (h)” substitute “, (h), (ha) or (hb)”;
 - (b) in paragraph (b), for “or (c)” substitute “, (c), (d) or (e)”.
- (4) In paragraph 3A (decisions of the tribunal: appeals on judicial review principles), in sub-paragraph (1) – 25
 - (a) in paragraph (a), for “or (h)” substitute “, (h), (ha) or (hb)”;
 - (b) in paragraph (b), for “or (c)” substitute “, (c), (d) or (e)”.

Enforcement

121 Power of Competition Appeal Tribunal to grant declaratory relief

Schedule 3 makes provision allowing the Competition Appeal Tribunal to grant declaratory relief. 30

122 Exemplary damages

- (1) In section 47C of CA 1998 (collective proceedings: damages and costs), before subsection (2) insert—
- “(1) The Tribunal may not award exemplary damages in collective proceedings.” 5
- (2) In Schedule 8A of CA 1998 (further provision about claims in respect of loss or damage before a court or the Tribunal)—
- (a) in Part 4 (cartels), in paragraph 15 (liability of immunity recipients)—
- (i) the existing text becomes sub-paragraph (1);
- (ii) in sub-paragraph (1), in the words before paragraph (a), for 10
 “in respect of loss and damage suffered by” substitute “to”;
- (iii) after that sub-paragraph insert—
- “(2) But an immunity recipient is not liable (either alone or jointly) by virtue of sub-paragraph (1)(e) to pay exemplary damages.”; 15
- (b) omit Part 8 (exemplary damages);
- (c) in Part 10 (application), in paragraph 42, in sub-paragraph (1) omit “, 8”.
- (3) The amendments made by this section have effect in relation to competition claims, competition proceedings, claims for contribution arising from competition claims and proceedings relating to such claims to the extent that— 20
- (a) the claims and proceedings relate to an infringement of competition law that takes place after the coming into force of this section, and
- (b) the loss or damage (if any) to which the claims or proceedings relate 25
 is suffered after the coming into force of this section.
- (4) For the purposes of subsection (3), where an infringement of competition law takes place over a period of two or more days it is to be taken to have taken place on the first of those days.
- (5) Terms used in subsection (3) and in Schedule 8A to CA 1998 have the same meaning in subsection (3) as they do in that Schedule (see Part 1 of that Schedule). 30

123 Offenders assisting investigations and prosecutions: powers of the CMA

- (1) In Chapter 2 of Part 2 of the Serious Organised Crime and Police Act 2005 (offenders assisting investigations and prosecutions), section 71 (assistance by offender: immunity from prosecution) is amended as follows. 35
- (2) In subsection (4), after paragraph (dab) insert—
- “(dac) the Competition and Markets Authority;”.

- (3) In subsection (6A), in the words before paragraph (a), after “the Bank of England,” insert “the Competition and Markets Authority”.
- (4) After subsection (7) insert –
 - “(8) The Competition and Markets Authority, or a person designated by the Competition and Markets Authority under subsection (4)(e), may not give an immunity notice (but has the other powers available to specified prosecutors).”

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CHAPTER 2

MERGERS

124 Relevant merger situations and special merger situations

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Schedule 4 makes provision amending the thresholds in Part 3 of EA 2002 (mergers) for the creation of relevant merger situations and special merger situations.

125 Fast-track references under sections 22 and 33 of EA 2002

Schedule 5 makes provision amending Part 3 of EA 2002 (mergers) to include provision about the making of fast-track references under section 22 or 33 of that Act.

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126 Mutual agreements to extend time-limits: duty to make reference cases

- (1) Chapter 1 of Part 3 of EA 2002 (mergers: duty to make references) is amended as follows
- (2) In section 39 (time-limits for investigations and reports) –
 - (a) before subsection (3) insert –
 - “(2A) Where the CMA and the persons carrying on the enterprises concerned agree –
 - (a) that the period within which a report under section 38 is to be prepared and published (the “original period”) should be extended, and
 - (b) the duration of the period by which the original period should be extended (the “extension period”),the CMA may extend the original period by the extension period.”;
 - (b) in subsection (7), after “subsection” insert “(2A),”;
 - (c) after that subsection insert –
 - “(7A) An extension under subsection (2A) continues in force until –
 - (a) the end of the extension period, or
 - (b) an earlier time if, before end of that period –

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-
- (i) the CMA and the persons carrying on the enterprises concerned agree that the extension should be cancelled with effect from the earlier time, and
 - (ii) the CMA publishes its decision to cancel the extension with effect from that time.” 5
 - (3) In section 40 (section 39: supplementary) –
 - (a) for subsection (3) substitute –
 - “(3) A period extended under any of subsections (2A), (3) or (4) of section 39 (each an “extension provision”) may also be extended under either or both of the other extension provisions.”; 10
 - (b) in subsection (5), for “section 39(3)” substitute “section 39(2A), (3)”.
 - (4) In Chapter 5 of Part 3 (mergers: supplementary), in section 107(2) (further publicity requirements), in paragraph (d), for “section 39(8)(b)” substitute “section 39(7A)(b) or (8)(b)”. 15

127 Mutual agreements to extend time-limits: public interest cases

- (1) Chapter 2 of Part 3 of EA 2002 (mergers: public interest cases) is amended as follows.
- (2) In section 51 (time-limits for investigations and reports by CMA) –
 - (a) before subsection (3) insert – 20
 - “(2A) Where –
 - (a) the CMA and the persons carrying on the enterprises concerned agree –
 - (i) that the period within which a report under section 50 is to be prepared and published (the “original period”) should be extended, and 25
 - (ii) the duration of the period by which the original period should be extended (the “extension period”), and
 - (b) the Secretary of State consents to the original period being extended by the extension period, 30
 the CMA may extend the original period by the extension period.”;
 - (b) in subsection (7), after “subsection” insert “(2A),”; 35
 - (c) after that subsection insert –
 - “(7A) An extension under subsection (2A) continues in force until –
 - (a) the end of the extension period, or
 - (b) an earlier time if, before end of that period –
 - (i) the CMA and the persons carrying on the enterprises concerned agree that the extension 40

- should be cancelled with effect from the earlier time,
- (ii) the Secretary of State consents to the cancellation of the extension with effect from that time, and
- (iii) the CMA publishes its decision to cancel the extension with effect from that time.” 5
- (3) In section 52 (section 51: supplementary) –
- (a) for subsection (3) substitute –
- “(3) A period extended under any of subsections (2A), (3) or (4) of section 51 (each an “extension provision”) may also be extended under either or both of the other extension provisions.”; 10
- (b) in subsection (5), for “section 51(3)” substitute “section 51(2A), (3)”.
- (4) In Chapter 5 of Part 3 (mergers: supplementary), in section 107(2)(j), for “section 51(8)(b)” substitute “section 51(7A)(b) or (8)(b)”.
- 128 Publication of merger notices online** 15
- In Chapter 5 of Part 3 of EA 2002 (mergers: supplementary), in section 96(5) (merger notices), for “in the London, Edinburgh and Belfast Gazettes” substitute “online”.

CHAPTER 3

MARKETS

20

129 Market studies: removal of time-limit on pre-reference consultation

- (1) Chapter 1 of Part 4 of EA 2002 (market studies and market investigations: references) is amended as follows.
- (2) In section 131B (market studies and the making of decisions to refer: time-limits) omit subsections (1) to (3). 25
- (3) In section 131C (time-limits under section 131B: supplementary) –
- (a) in subsection (1) omit paragraph (a);
- (b) in subsection (2) omit paragraph (a) and the “or” after it.

130 Scope of market investigations

- (1) Chapter 1 of Part 4 of EA 2002 (market studies and market investigations: references) is amended as follows. 30
- (2) In section 133 (contents of market investigation references) –
- (a) after subsection (1) insert –
- “(1A) A market investigation reference may be framed so as to require the group constituted by the chair of the CMA in respect of the reference to confine its investigation into the effects of 35

features of markets in the United Kingdom for goods or services of a description specified in the reference to the effects of particular features of such markets.

- (1B) For the purposes of subsection (1A), “particular features” means features specified in the reference.”; 5
- (b) in subsection (2), for the words before paragraph (a) substitute “For the purposes of subsection (1A), a reference may (for example) specify or describe features that exist in connection with—”.
- (3) In section 134 (questions to be decided on market investigation references)— 10
- (a) in subsection (1), for “feature, or combination of features,” substitute “relevant feature”;
- (b) in subsection (2), for “feature, or combination of features,” substitute “relevant feature”;
- (c) after subsection (2A) insert—
- “(2B) In subsections (1) and (2), “relevant feature” means— 15
- (a) any feature of a relevant market which is not excluded from investigation by virtue of section 133(1A), or
- (b) a combination of such features.”;
- (d) in subsection (7), after “features” insert “concerned”.
- 131 Acceptance of undertakings at any stage of a market study or investigation 20**
- Schedule 6 makes provision allowing the CMA to accept undertakings under Part 4 of EA 2002 (market studies and market investigations) at any stage during a market study or investigation.
- 132 Final undertakings and orders: power to conduct trials 25**
- Schedule 7 makes provision amending Part 4 of EA 2002 allowing the CMA or the Secretary of State to conduct trials to assess the likely effectiveness of final undertakings and orders that the CMA or the Secretary of State is minded to accept or impose under that Part.
- 133 Duty of CMA to monitor undertakings and orders 30**
- (1) Chapter 3 of Part 4 of EA 2002 (market studies and market investigations: enforcement) is amended as follows.
- (2) In section 161 (final orders: Part 4), in subsection (5)— 35
- (a) after “advises” insert “, in accordance with section 162(3) or section 162A(8),”;
- (b) omit “by reason of a change of circumstances”.
- (3) In section 162 (duty of CMA to monitor undertakings and orders: Part 4)—
- (a) in the heading, after “monitor” insert “the carrying out of”;
- (b) omit subsections (5) to (7).

(4) After that section insert—

**“162A Duty of CMA to monitor effectiveness of undertakings and orders:
Part 4**

- (1) The CMA must keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part. 5
- (2) The CMA must, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (1).
- (3) The CMA must— 10
- (a) give a copy of any report prepared by it under subsection (2) to the Secretary of State, and
 - (b) publish the report.
- (4) Subsection (5) applies, in relation to an adverse effect on competition identified in a report mentioned in section 138(1), where— 15
- (a) the report was published within the previous 10 years,
 - (b) the CMA last took action in accordance with section 138(2) or subsection (5) of this section no less than two years ago, and
 - (c) the CMA concludes, as a result of a review under subsection (1), that the action mentioned in paragraph (b) has been ineffective for the purposes mentioned in that section. 20
- (5) The CMA must take such action as it considers appropriate for the purposes mentioned in section 138(2) in relation to—
- (a) any possible variation or release by the CMA of an enforcement undertaking accepted by it; 25
 - (b) any possible new enforcement undertaking to be accepted by the CMA so as to supersede another enforcement undertaking given to it;
 - (c) any possible variation or revocation by the CMA of an enforcement order made by it; 30
 - (d) any possible enforcement undertaking to be accepted by the CMA instead of an enforcement order made by it, or any possible enforcement order to be made by the CMA instead of an enforcement undertaking accepted by it.
- (6) Where the CMA decides to take action under subsection (5), the CMA must take the action within the period of six months beginning with the date on which that decision is published under section 172(2)(h). 35
- (7) Subsection (8) applies, in relation to an adverse effect on competition or an effect adverse to the public interest identified in a report mentioned in section 146(1) or 146A(1) (as the case may be), where— 40
- (a) the report was laid before each House of Parliament in accordance with section 172(10) within the previous 10 years,

-
- (b) the Secretary of State last took action in accordance with section 147(2) or 147A(2) (as the case may be) no less than two years ago, and
- (c) the CMA concludes, as a result of a review under subsection (1), that action taken in accordance with that section has been ineffective for the purposes mentioned in that section. 5
- (8) The CMA must give the Secretary of State such advice as it considers appropriate for the purposes mentioned in section 142(2) or 147A(2) (as the case may be) in relation to –
- (a) any possible variation or release by the Secretary of State of an enforcement undertaking accepted by the Secretary of State; 10
- (b) any possible new enforcement undertaking to be accepted by the Secretary of State under that section so as to supersede another enforcement undertaking given to the Secretary of State; 15
- (c) any possible variation or revocation by the Secretary of State of an enforcement order made by the Secretary of State;
- (d) any possible enforcement undertaking to be accepted by the Secretary of State instead of an enforcement order, or any possible enforcement order to be made by the Secretary of State instead of an enforcement undertaking accepted under that section.” 20
- (5) Chapter 4 of Part 4 of EA 2002 (market studies and market investigations: supplementary) is amended as follows.
- (6) In section 169 (certain duties of relevant authorities to consult: Part 4), in subsection (6), in paragraph (a) of the definition of “relevant decision”, after sub-paragraph (iv) (inserted by paragraph 10(3) of Schedule 7) insert – 25
- “(v) to take action under section 162A(5); and”.
- (7) In section 172 (further publicity requirements: Part 4) –
- (a) in subsection (2) – 30
- (i) omit the “and” at the end of paragraph (f);
- (ii) at the end insert “; and
- (h) any decision by it to take action under section 162A(5).”;
- (b) after subsection (10) insert – 35
- “(11) Where the Secretary of State has decided, in accordance with the CMA’s advice under section 162(3) or 162A(8), to accept or release an undertaking under section 159, or to make or revoke an order under section 161, the Secretary of State must, after the acceptance or release of the undertaking or (as the case may be) the making or revocation of the order, lay details of the Secretary of State’s decision and the reasons for it, and the CMA’s advice, before each House of Parliament.” 40

- (8) In section 177 (excisions from reports: Part 4)–
- (a) in the heading, after “reports” insert “etc”;
 - (b) in subsection (1)–
 - (i) the words from “the Secretary of State” to the end become paragraph (a); 5
 - (ii) after that paragraph insert “;
“(b) the Secretary of State is under a duty to lay the CMA’s advice under section 162(3) or 162A(8) before each House of Parliament.”
 - (c) in subsection (2)– 10
 - (i) after “report” insert “or advice”;
 - (ii) after “publication of the matter” insert “, or the inclusion of it in the advice laid before Parliament,”.

CHAPTER 4

CARTELS 15

134 Production of information authorised by warrant

- (1) Section 194 of EA 2002 (power to enter premises under a warrant) is amended as follows.
- (2) In subsection (1), in paragraph (a), after “there are on” insert “or accessible from”. 20
- (3) In subsection (2)–
- (a) in paragraph (d) omit “and which the named officer considers relates to any matter relevant to the investigation,”;
 - (b) after that paragraph insert –
 - “(e) to operate any equipment found on the premises for the purposes of producing such information in such a form; 25
 - (f) to require any person on the premises to give the named officer any assistance the named officer may reasonably require (including for the purposes of paragraphs (d) and (e)); 30
 - (g) to take copies of, or seize, anything produced in accordance with paragraph (d) or (e) which the named officer considers relates to any matter relevant to the investigation.” 35
- (4) In section 196 of EA 2002 (privileged information etc), after subsection (2) insert –
- “(2A) Nothing in section 194 authorises an officer to produce or take possession of, or make copies of or take extracts from, anything which,

- (3) Schedule 10 makes provision providing that certain functions being conferred on the CMA by Schedules 8 and 9 are not exercisable concurrently by sectoral regulators.

137 Service and extra-territoriality of notices under CA 1998 and EA 2002

Schedule 11 makes provision about— 5

- (a) the service of documents under Chapter 3 of Part 1 of CA 1998 (investigation and enforcement) and Parts 3 (mergers) and 4 (market studies and market investigations) of EA 2002;
- (b) the extra-territorial application of notices under sections 26 and 40ZD of CA 1998 and sections 109(2) and (3) and 174(4) and (5) of EA 2002. 10

138 Orders and regulations under CA 1998 and EA 2002

Schedule 12 makes provision about the making of orders and regulations under—

- (a) CA 1998, and
- (b) Parts 3 (mergers) and 4 (market studies and market investigations) of EA 2002. 15

PART 3

ENFORCEMENT OF CONSUMER PROTECTION LAW

CHAPTER 1

OVERVIEW 20

139 Overview

- (1) This Part confers enforcement powers, and makes provision about other remedies, in connection with infringements of consumer protection law.
- (2) Chapter 2 provides for the kinds of infringements in respect of which enforcement powers conferred by Chapter 3 or 4 are available. 25
- (3) Chapter 3—
- (a) confers powers on courts to make consumer protection orders, and
- (b) provides for the acceptance of undertakings as an alternative to the making of such orders.
- (4) Chapter 4 confers powers on the CMA in connection with certain kinds of infringements, including powers of the CMA to impose monetary penalties. 30
- (5) Chapter 5 contains general provisions about monetary penalties imposed under Chapter 3 or 4.
- (6) Chapter 6 amends Schedule 5 to CRA 2015 in relation to the giving of information notices. 35

- (7) Chapter 7 contains miscellaneous provisions and Chapter 8 contains interpretative provisions.

CHAPTER 2

RELEVANT INFRINGEMENTS

- 140 Relevant infringements** 5
- (1) A commercial practice is a relevant infringement for the purposes of Chapter 3 or 4 if it—
- (a) harms the collective interests of consumers,
 - (b) meets the UK connection condition (see section 141), and
 - (c) meets the specified prohibition condition (see section 142). 10
- (2) In this Part—
- “commercial practice” means an act or omission by a trader relating to the promotion or supply of—
- (a) the trader’s goods, services or digital content to a consumer,
 - (b) another trader’s goods, services or digital content to a consumer, or 15
 - (c) a consumer’s goods, services or digital content to the trader or another trader;
- “consumer” means an individual acting for purposes that are wholly or mainly outside the individual’s business; 20
- “trader” means—
- (a) a person (“P”) acting for purposes relating to P’s business, or
 - (b) a person acting in the name of, or on behalf of, P for purposes relating to P’s business.
- (3) It is immaterial for the purposes of the definition of “commercial practice” in subsection (2) whether the act or omission takes place— 25
- (a) at the time of the promotion or supply in question, or
 - (b) before or after that time.
- (4) It is immaterial for the purposes of the definition of “trader” in subsection (2)— 30
- (a) in relation to paragraph (a) of that definition, whether P is acting personally or through another person acting in P’s name or on P’s behalf;
 - (b) in relation to paragraph (b) of that definition, whether or not the purposes relating to P’s business are the only or main purposes for which the person is acting. 35
- (5) For the purposes of this Part—
- (a) references to consumers includes persons who may become consumers in the future;

- (b) the collective interests of consumers are capable of being harmed by a single act or omission (as well as by repeated acts or omissions).

141 The UK connection condition

- (1) A commercial practice meets the UK connection condition for the purposes of section 140 if at least one of the following conditions is met – 5
 - (a) the trader has a place of business in the United Kingdom;
 - (b) the trader carries on business in the United Kingdom;
 - (c) the commercial practice occurs in the carrying on of activities by the trader that are, by any means, directed to consumers in the United Kingdom. 10
- (2) It is immaterial for the purposes of subsection (1)(c) whether the activities are carried on in the United Kingdom or elsewhere.

142 The specified prohibition condition

- (1) A commercial practice meets the specified prohibition condition for the purposes of section 140 as it applies for the purposes of Chapter 3 if the commercial practice is – 15
 - (a) in breach of an enactment listed in Part 1 of Schedule 13 (to the extent specified), or
 - (b) in breach of an obligation or rule of law listed in Part 2 of that Schedule. 20
- (2) A commercial practice meets the specified prohibition condition for the purposes of section 140 as it applies for the purposes of Chapter 4 if it is in breach of an enactment listed in Schedule 14 (to the extent specified).
- (3) In the Table listing enactments in Part 1 of Schedule 13 – 25
 - (a) the first column lists the enactments;
 - (b) the corresponding entry in the second column specifies the authorised enforcers in relation to the enactment for the purposes of section 145;
 - (c) the third column provides information about transitional provision etc in relation to certain enactments.
- (4) In the Table listing obligations and rules of law in Part 2 of Schedule 13 – 30
 - (a) the first column describes the obligations or rules of law;
 - (b) the corresponding entry in the second column specifies the authorised enforcers in relation to the obligation or rule of law for the purposes of section 145.

CHAPTER 3

CONSUMER PROTECTION ORDERS AND UNDERTAKINGS

Enforcers for purposes of Chapter

143 Enforcers

- | | |
|---|----|
| (1) Each of the following is a public designated enforcer for the purposes of this Chapter – | 5 |
| (a) the CMA; | |
| (b) every local weights and measures authority in Great Britain; | |
| (c) the Department for the Economy in Northern Ireland; | |
| (d) the Civil Aviation Authority; | 10 |
| (e) the Financial Conduct Authority; | |
| (f) the Gas and Electricity Markets Authority; | |
| (g) the Department of Health in Northern Ireland; | |
| (h) the Department for Infrastructure in Northern Ireland; | |
| (i) the Northern Ireland Authority for Utility Regulation; | 15 |
| (j) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services); | |
| (k) the Information Commissioner; | |
| (l) the Maritime and Coastguard Agency; | |
| (m) the Office of Communications; | 20 |
| (n) the Office of Rail and Road; | |
| (o) the Office for the Traffic Commissioner; | |
| (p) the Secretary of State; | |
| (q) the Water Services Regulation Authority. | |
| (2) The Consumers' Association is a private designated enforcer for the purposes of this Chapter. | 25 |
| (3) The Secretary of State may by regulations amend subsection (1) or (2) so as to – | |
| (a) add or remove a person as a public designated enforcer; | |
| (b) add or remove a person as a private designated enforcer; | 30 |
| (c) vary the entry of a person as a public or private designated enforcer. | |
| (4) The power under subsection (3)(a) to add a person as a public designated enforcer is exercisable only if the Secretary of State considers that the person is a public body that has, as one of their purposes, the protection of the collective interests of consumers. | 35 |
| (5) The power under subsection (3)(b) to add a person as a private designated enforcer is exercisable only if the Secretary of State considers that the person – | |
| (a) is not a public body, | |
| (b) satisfies the designation criteria in section 144, and | |

- (c) has, as one of their purposes, the protection of the collective interests of consumers.
- (6) The power under subsection (3)(a) and (c) to remove a person as a public designated enforcer, or to vary the entry of such a person, does not apply so far as relating to the persons listed in paragraphs (a) to (c) of subsection (1). 5
- (7) Regulations under this section are subject to the affirmative procedure.

144 Designation criteria

- (1) These are the designation criteria in respect of a person (“P”) for the purposes of section 143(5)(b) –
 - (a) P is constituted, managed and controlled in such a way as to be expected to act independently, impartially and with integrity; 10
 - (b) P has established procedures to ensure that any potential conflicts of interest are properly dealt with;
 - (c) P has demonstrated experience, competence and expertise in promoting or protecting the collective interests of consumers; 15
 - (d) P has demonstrated the ability to protect the interests of consumers by promoting high standards of integrity and fair dealing in the conduct of business in relation to consumers;
 - (e) P has the capability to investigate infringements and carry out enforcement procedures under this Chapter; 20
 - (f) P is ready and willing to follow best practice in enforcement;
 - (g) P is ready and willing to co-operate with other enforcers and relevant persons.
- (2) P does not fail to meet the criteria in subsection (1)(a) by reason only of a connection with another person carrying on a business of a kind that could be affected (directly or indirectly) by action taken under this Chapter if – 25
 - (a) the other person does not control P, and
 - (b) the profits of the other person’s business are used for the purposes of furthering the objectives of P.
- (3) For the purposes of subsection (1)(g) – 30
 - (a) “relevant persons” are any persons responsible for the regulation of matters in respect of which acts or omissions may constitute a relevant infringement;
 - (b) co-operation includes, in particular – 35
 - (i) sharing of information (so far as legally permitted), and
 - (ii) participating in arrangements to co-ordinate action under this Part.

Applications for enforcement orders and interim enforcement orders

145 Applications

- (1) An enforcer may (subject to subsection (2)) apply to the appropriate court for an enforcement order or an interim enforcement order if the enforcer considers that – 5
 - (a) a person has engaged in, is engaging in or is likely to engage in a commercial practice which constitutes a relevant infringement, or
 - (b) a person is an accessory to such a practice.
- (2) An enforcer may make an application in respect of a relevant infringement only if – 10
 - (a) in the case of a commercial practice in breach of an enactment listed in the first column of the Table in Part 1 of Schedule 13, the enforcer is an authorised enforcer in respect of that enactment in accordance with the second column of that Table;
 - (b) in the case of a commercial practice in breach of an obligation or rule of law listed in the first column of the Table in Part 2 of Schedule 13, the enforcer is an authorised enforcer in respect of that obligation or rule of law in accordance with the second column of that Table. 15
- (3) An application for an enforcement order or an interim enforcement order – 20
 - (a) must be made in respect of the person the enforcer considers falls within subsection (1)(a) or (b) (“the respondent”), and
 - (b) must (where known) name the respondent.
- (4) An application by a public designated enforcer for an enforcement order may, subject to subsection (5), include an application for the respondent to pay a monetary penalty. 25
- (5) In the case of a respondent within subsection (1)(a), an application under subsection (4) may be made only in respect of a commercial practice that the enforcer considers a person has engaged, or is engaging, in (but not in respect of a practice that the enforcer considers a person is likely to engage in).

146 CMA directions to other enforcers 30

- (1) This section applies where it appears to the CMA that another enforcer intends to make an application for an enforcement order or an interim enforcement order.
- (2) The CMA may direct that an application for such an order in respect of a particular relevant infringement – 35
 - (a) may be made only by the CMA,
 - (b) may be made only by such other enforcer as may be specified in the direction, or
 - (c) is not to be made by any enforcer.
- (3) A direction under subsection (2) – 40

- (a) does not prevent the acceptance of an undertaking under section 155 by the CMA or another enforcer;
 - (b) does not prevent the CMA from taking such other steps as it considers appropriate for the purpose of securing that the infringement is not committed, continued or repeated. 5
- (4) A direction under subsection (2)(c) may be made—
 - (a) only in respect of an infringement that is a relevant infringement for the purposes of Chapter 4 (in addition to being a relevant infringement for the purposes of this Chapter), and
 - (b) only if the CMA is conducting, or proposes to conduct, an investigation under section 172 in relation to that infringement. 10
- (5) A direction under this section may be varied or withdrawn.
- (6) The CMA must take such steps as it considers appropriate to bring a direction (or its variation or withdrawal) to the attention of enforcers likely to be affected by it. 15

147 Consultation

- (1) Before making an application for an enforcement order or an interim enforcement order, an enforcer must (subject to subsection (5)) engage in appropriate consultation with the person in respect of whom the order would be made (“the respondent”). 20
- (2) Consultation is “appropriate consultation” for the purposes of subsection (1) if it is carried out for the purposes of—
 - (a) achieving the cessation of a relevant infringement (in a case where the infringement is occurring) and ensuring it does not recur;
 - (b) ensuring there is no repetition of a relevant infringement in a case where the infringement has occurred; 25
 - (c) ensuring that a relevant infringement does not take place in a case where the infringement has yet to occur;
 - (d) ensuring, in the case of consultation carried out by a public designated enforcer, that the respondent is aware that an application for an enforcement order may include an application for the respondent to pay a monetary penalty. 30
- (3) Engagement under subsection (1) must be initiated by the giving of a consultation request to the respondent.
- (4) A consultation request must be given by notice in writing. 35
- (5) The requirement to consult under this section does not apply if—
 - (a) the CMA considers that an application for the order in question should be made without delay, or
 - (b) it is not reasonably practicable for the enforcer to ascertain the identity and whereabouts of the respondent. 40

- (6) The requirement to consult under this section ceases to apply –
- (a) in the case of an application for an enforcement order, at the end of the applicable period;
 - (b) in the case of an application for an interim enforcement order, at the end of the period of 7 days beginning with the day after the respondent receives a consultation request. 5
- (7) In subsection (6)(a) the “applicable period” means –
- (a) in a case where the respondent is a member of, or is represented by, an approved representative body, the period of 28 days beginning with the day after the respondent receives a consultation request; 10
 - (b) in any other case, the period of 14 days beginning with the day after the respondent receives a consultation request.
- (8) In subsection (7)(a) “approved representative body” means a representative body that operates a consumer code which has been approved by –
- (a) a public designated enforcer, 15
 - (b) a body which represents a public designated enforcer,
 - (c) a group of public designated enforcers, or
 - (d) a community interest company whose objects include the approval of consumer codes.
- (9) In subsection (8) – 20
- “consumer code” means an agreement or set of rules regulating, with a view to safeguarding or promoting the interests of consumers, the behaviour of traders who –
- (a) are engaged in commercial practices, and
 - (b) choose to be bound by the agreement or set of rules; 25
- “representative body” means an organisation established to represent the interests of two or more businesses in a particular sector or area.

Powers of court on application under section 145

148 Enforcement orders and undertakings

- (1) This section applies if, on an application under section 145 for an enforcement order, the court finds that the person in respect of whom the application is made (“the respondent”) – 30
- (a) has engaged, is engaging or is likely to engage in a commercial practice which constitutes a relevant infringement (“the infringing practice”), or 35
 - (b) is an accessory to the infringing practice.
- (2) The court may –
- (a) make an enforcement order against the respondent, or
 - (b) accept an undertaking from the respondent given under subsection (5). 40

- (3) In considering whether to make an enforcement order the court must have regard to whether the respondent –
 - (a) has given an undertaking under section 155 or 177 in respect of the infringing practice, and
 - (b) if so, whether the respondent has failed to comply with the undertaking. 5
- (4) An enforcement order is an order that –
 - (a) indicates the nature of the infringing practice, and
 - (b) directs the respondent to comply with subsection (6).
- (5) The respondent gives an undertaking under this subsection by undertaking – 10
 - (a) to comply with subsection (6), or
 - (b) to take steps which the court believes will secure that the respondent complies with subsection (6).
- (6) The respondent complies with this subsection by –
 - (a) in the case of a respondent within subsection (1)(a), not continuing or repeating the infringing practice (where it is alleged that the person has engaged or is engaging in that practice); 15
 - (b) in the case of a respondent within subsection (1)(b), not consenting to or conniving in the infringing practice;
 - (c) in either case, not engaging in the infringing practice in the course of the respondent’s business or another business; 20
 - (d) in either case, not consenting to or conniving in the carrying out of the infringing practice by a body corporate with which the respondent has a special relationship (see section 212).
- (7) See also – 25
 - (a) section 149 about the inclusion of enhanced consumer measures in an enforcement order or undertaking;
 - (b) section 150 about the inclusion of a requirement to pay a monetary penalty in an enforcement order.
- (8) An enforcement order may require the respondent to publish – 30
 - (a) the order;
 - (b) a corrective statement.
- (9) An undertaking under subsection (5) may include a further undertaking by the respondent to publish –
 - (a) the terms of the undertaking; 35
 - (b) a corrective statement.
- (10) Publication under subsection (8) or (9) –
 - (a) must be made in such form and manner, and to such extent, as the court considers appropriate for the purpose of eliminating any continuing effects of the conduct in respect of which the order was made or undertaking given; 40
 - (b) is not an enhanced consumer measure for the purposes of this Chapter.

- (11) Where the court has accepted from the respondent an undertaking under subsection (5) –
- (a) the court may accept from the respondent any variation of the undertaking that the court considers appropriate for meeting the purposes for which the undertaking was given; 5
 - (b) the court may release the respondent from the undertaking (whether on its own initiative or at the respondent’s request) if the court considers that the undertaking is no longer necessary to further those purposes.

149 Enforcement orders and undertakings: enhanced consumer measures 10

- (1) An enforcement order or undertaking may include a requirement to take such enhanced consumer measures as the court considers just and reasonable.
- (2) For this purpose, the court must in particular consider whether any proposed enhanced consumer measures are proportionate having regard to –
 - (a) the likely benefit of the measures to consumers, 15
 - (b) the costs likely to be incurred by the respondent, and
 - (c) the likely cost to consumers of obtaining the benefit of the measures.
- (3) The costs referred to in subsection (2)(b) are –
 - (a) the cost of the measures, and
 - (b) the reasonable administrative costs associated with taking the measures. 20
- (4) Where the respondent is required under an enforcement order or an undertaking to take enhanced consumer measures, the order or undertaking may include requirements for the respondent to provide information or documents to the court in order that the court may determine whether the respondent is taking those measures. 25
- (5) Subsection (6) applies if –
 - (a) an enforcement order or undertaking includes enhanced consumer measures offering compensation, and
 - (b) a settlement agreement is entered into in connection with the payment of compensation. 30
- (6) A waiver of a person’s rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than conduct which has given rise to the enforcement order or undertaking.
- (7) This section is subject to section 169 (private designated enforcers).
- (8) In this section “undertaking” means an undertaking given under section 148(5). 35
- (9) References in this Part to “enhanced consumer measures” are to be read in accordance with section 213.

150 Enforcement orders: requirement to pay monetary penalty

- (1) This section applies where the court makes an enforcement order against the respondent on an application made by a public designated enforcer.
- (2) The order may, subject to subsection (3), include a requirement for the respondent to pay a monetary penalty. 5
- (3) In the case of a respondent within section 148(1)(a), a requirement to pay a monetary penalty may be imposed only if the court finds that the respondent has engaged, or is engaging, in a commercial practice constituting a relevant infringement (and not in respect of a practice that the court finds that the person is likely to engage in). 10
- (4) Where the order includes a requirement under subsection (2), the order must set out the monetary penalty information (see section 195).
- (5) The amount of a monetary penalty must be a fixed amount not exceeding £300,000 or, if higher, 10% of the total value of the turnover (if any) of the respondent. 15
- (6) A monetary penalty may not be imposed on the respondent by virtue of this section in respect of any conduct that constitutes an offence if the respondent has been found guilty of that offence.
- (7) The respondent does not commit an offence in relation to any conduct in respect of which a monetary penalty is imposed on the respondent by virtue of this section. 20
- (8) In addition to any right of appeal on a point of law, a person liable to pay a monetary penalty by virtue of this section may appeal in respect of—
 - (a) the decision to impose the penalty, or
 - (b) the nature or amount of the penalty. 25

151 Interim enforcement orders and undertakings

- (1) This section applies if—
 - (a) it is alleged in an application under section 145 for an interim enforcement order that a person (“the respondent”)—
 - (i) has engaged, is engaging or is likely to engage in a commercial practice which constitutes a relevant infringement (“the infringing practice”), or 30
 - (ii) is an accessory to the infringing practice,
 - (b) it appears to the court that if the application had been an application for an enforcement order it would be likely to be granted, and 35
 - (c) the court considers it is expedient that the infringing practice is prohibited or prevented immediately.
- (2) The court may—
 - (a) make an interim enforcement order against the respondent, or

- (b) accept an undertaking from the respondent to comply with subsection (5) or to take steps which the court believes will secure such compliance.
- (3) If no notice of the application has been given to the respondent, the court may proceed under subsection (2)(a) only if it considers it appropriate to make an interim enforcement order without notice. 5
- (4) An interim enforcement order is an order that—
- (a) indicates the nature of the infringing practice, and
 - (b) directs the respondent to comply with subsection (5).
- (5) The respondent complies with this subsection by— 10
- (a) in the case of a respondent within subsection (1)(a)(i), not continuing or repeating the infringing practice (where it is alleged that the person has engaged or is engaging in that practice);
 - (b) in the case of a respondent within subsection (1)(a)(ii), not consenting to or conniving in the infringing practice; 15
 - (c) in either case, not engaging in the infringing practice in the course of the respondent's business or another business;
 - (d) in either case, not consenting to or conniving in the carrying out of the infringing practice by a body corporate with which the respondent has a special relationship (see section 212). 20
- (6) An application for an interim enforcement order in respect of alleged conduct of the respondent may not be made at any time after—
- (a) an application for an enforcement order against the respondent in respect of that conduct is determined, or
 - (b) a final infringement notice in respect of that conduct has been given to the respondent (see section 174). 25
- (7) An application for an interim enforcement order must—
- (a) include all information known to the applicant that is material to the question of whether or not the application is granted;
 - (b) if made without notice, state why no notice has been given. 30
- (8) The court may vary or discharge an interim enforcement order on the application of the applicant or the respondent.
- (9) An interim enforcement order made in respect of conduct of the respondent is discharged—
- (a) on the determination of an application for an enforcement order made against the respondent in respect of that conduct, or 35
 - (b) on the giving of a final infringement notice to the respondent in respect of that conduct.

Online interface orders and interim online interface orders

152 Applications

- (1) The CMA may apply to the appropriate court for an online interface order, or an interim online interface order, if the CMA considers that a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement. 5
- (2) An application for an online interface order, or an interim online interface order, may be made in respect of—
 - (a) the person that the CMA considers has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement, or 10
 - (b) any other person (subject to subsection (3)).
- (3) An application under subsection (2)(b) in respect of a person who is outside the United Kingdom may be made only if the person—
 - (a) is a United Kingdom national, 15
 - (b) is an individual who is habitually resident in the United Kingdom,
 - (c) is a firm established in the United Kingdom, or
 - (d) carries on business in the United Kingdom or by any means directs activities in the course of carrying on a business to persons in the United Kingdom. 20
- (4) For the purposes of subsection (3)(c), a firm is “established in the United Kingdom” if—
 - (a) it is incorporated or formed under the law of a part of the United Kingdom, or
 - (b) it is administered under arrangements governed by the law of a part of the United Kingdom. 25
- (5) Nothing in this section or in section 153 or 154 limits other powers under this Chapter to make enforcement orders or interim enforcement orders or to accept undertakings.

153 Online interface orders

- (1) The court may make an online interface order on an application under section 152 if the court finds that—
 - (a) a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement,
 - (b) there are no other available means under this Chapter of bringing about the cessation or prohibition of the infringement which, by themselves, would be wholly effective, and 35
 - (c) it is necessary to make the order to avoid the risk of serious harm to the collective interests of consumers.

- (2) An online interface order is an order that directs the person against whom it is made to do, or to co-operate with another person so that person can do, one or more of the following –
- (a) remove content from, or modify content on, an online interface;
 - (b) disable or restrict access to an online interface; 5
 - (c) display a warning to consumers accessing an online interface;
 - (d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.
- (3) Where an online interface order is made, the CMA may publish –
- (a) the order, and 10
 - (b) where known, the identify of the person who has engaged, is engaging or is likely to engage in a commercial practice which constitutes the relevant infringement.
- (4) Publication under subsection (3) is to be made in such form and manner as the CMA considers appropriate for the purpose of eliminating any continuing effects of the relevant infringement. 15
- (5) In subsection (2) “online interface” means any software, including a website, part of a website, an application or other digital content which –
- (a) is operated by a person (“P”) acting for purposes relating to P’s business or by a person acting in the name of, or on behalf of, P, and 20
 - (b) is operated for or in connection with the purposes of giving access to, or promoting, goods, services or digital content that P or another person supplies.

154 Interim online interface orders

- (1) The court may make an interim online interface order against a person (“the respondent”) on an application under section 152 if –
- (a) it is alleged that there has been or is likely to be a relevant infringement,
 - (b) it appears to the court that if the application had been an application for an online interface order it would be likely to be granted, and 30
 - (c) the court considers it expedient to bring about the cessation or prohibition of the infringement immediately.
- (2) If no notice of the application has been given to the respondent –
- (a) the application must state why no notice has been given, and
 - (b) the court may make the order only if it considers it appropriate for the order to be made without notice. 35
- (3) An interim online interface order is an order that directs the respondent to do, or to co-operate with another person so that person can do, one or more of the following –
- (a) remove content from, or modify content on, an online interface; 40
 - (b) disable or restrict access to an online interface;

- (c) display a warning to consumers accessing an online interface;
 - (d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.
- In this subsection “online interface” has the meaning given by section 153(5).
- (4) An application for an interim online interface order against the respondent may not be made at any time after –
 - (a) an application for an online interface order against the respondent in respect of the same relevant infringement is determined, or
 - (b) an online interface notice in respect of the same relevant infringement has been given to the respondent (see section 176).
 - (5) An application for an interim online interface order must include all information known to the CMA that is material to the question of whether or not the application is granted.
 - (6) The court may vary or discharge an interim online interface order on the application of the CMA or the respondent.
 - (7) An interim online interface order against the respondent is discharged on the determination of –
 - (a) an application for an online interface order made against the respondent in respect of the same relevant infringement, or
 - (b) an online interface notice in respect of the same relevant infringement has been given to the respondent.

Undertakings and further proceedings

155 Acceptance of undertakings by enforcers

- (1) This section applies where an enforcer could make an application under section 145 for an enforcement order, or an interim enforcement order, against a person (“the respondent”) whom the enforcer believes –
 - (a) has engaged, is engaging or is likely to engage in a commercial practice which constitutes a relevant infringement (“the infringing practice”), or
 - (b) is an accessory to the infringing practice.
- (2) The enforcer may accept an undertaking from the respondent to do one or more of the following –
 - (a) in the case of a respondent within subsection (1)(a), not to continue or repeat the infringing practice (where it is alleged that the respondent has engaged or is engaging in that practice);
 - (b) in the case of a respondent within subsection (1)(b), not to consent to or connive in the infringing practice;
 - (c) in either case, not to engage in the infringing practice in the course of the respondent’s business or another business;

- (d) in either case, not to consent to or connive in the carrying out of the infringing practice by a body corporate with which the respondent has a special relationship (see section 212).
- (3) See also section 156 about the inclusion of enhanced consumer measures in an undertaking under this section. 5
- (4) Where the enforcer accepts an undertaking under subsection (2) the enforcer may publish the undertaking or accept a further undertaking from the respondent to do so.
- (5) Publication under subsection (4)–
 - (a) must be made in such form and manner, and to such an extent, as the enforcer considers appropriate for the purpose of eliminating any continuing effects of the infringing practice; 10
 - (b) is not an enhanced consumer measure for the purposes of this Chapter.
- (6) Where an enforcer has accepted from the respondent an undertaking under this section – 15
 - (a) the enforcer may accept from the respondent any such variation of the undertaking that the enforcer considers appropriate for meeting the purposes for which the undertaking was given;
 - (b) the enforcer may release the respondent from the undertaking (whether on its own initiative or at the respondent’s request) if the enforcer considers that the undertaking is no longer necessary to meet those purposes. 20
- (7) Each enforcer must keep a record of –
 - (a) undertakings it has accepted under this section, and
 - (b) reviews it has carried out into the effectiveness of such undertakings. 25
- (8) In determining for the purposes of subsection (1) whether an enforcer could make an application under section 145, section 161 is to be ignored.

156 Undertakings under section 155: enhanced consumer measures

- (1) An undertaking under section 155(2) may include a requirement to take such enhanced consumer measures as the enforcer accepting the undertaking considers just and reasonable. 30
- (2) For this purpose, the enforcer must in particular consider whether any proposed enhanced consumer measures are proportionate having regard to –
 - (a) the likely benefit of the measures to consumers,
 - (b) the costs likely to be incurred by the respondent, and 35
 - (c) the likely cost to consumers of obtaining the benefit of the measures.
- (3) The costs referred to in subsection (2)(b) are –
 - (a) the cost of the measures, and
 - (b) the reasonable administrative costs associated with taking the measures.

- (4) Where the respondent is required by an undertaking to take enhanced consumer measures, the undertaking may include requirements for the respondent to provide information or documents to the enforcer accepting the undertaking in order that the enforcer may determine if the respondent is taking those measures. 5
- (5) Subsection (6) applies if –
- (a) an undertaking under section 155(2) includes enhanced consumer measures offering compensation, and
 - (b) a settlement agreement is entered into in connection with the payment of compensation. 10
- (6) A waiver of a person’s rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than conduct which has given rise to the undertaking.
- (7) This section is subject to section 169 (private designated enforcers).
- 157 Undertakings under section 155: procedural requirements 15**
- (1) This section applies where an enforcer proposes to –
- (a) accept a material variation of an undertaking under section 155(2), or
 - (b) release the respondent from any such undertaking.
- (2) Before taking the proposed action mentioned in subsection (1) the enforcer must –
- (a) give notice to the respondent under subsection (3), and
 - (b) consider any representations made in accordance with the notice. 20
- (3) A notice under this subsection must state –
- (a) the fact that the enforcer is proposing to act as mentioned in subsection (1), 25
 - (b) the reasons for doing so, and
 - (c) the means by which, and the time by which, representations may be made in relation to the proposed action.
- (4) If after considering any representations made in accordance with a notice under subsection (3) an enforcer decides to take an action mentioned in subsection (1), the enforcer must give notice to the respondent of that decision. 30
- (5) The reference in subsection (1)(a) to a material variation is a reference to any variation that the enforcer considers to be material in any respect.
- 158 Consumer protection orders or undertakings to court: further proceedings**
- (1) This section applies if the court – 35
- (a) makes a consumer protection order against a person (“the respondent”) on an application made by an enforcer (“the original application”), or
 - (b) accepts an undertaking from the respondent under section 148 or 151 on the making of the original application.

- (2) References in this Part to a “consumer protection order” are references to –
- (a) an enforcement order,
 - (b) an interim enforcement order,
 - (c) an online interface order, or
 - (d) an interim online interface order. 5
- (3) An application may (subject to subsection (7)) be made to the same court to which the original application was made in respect of a failure to comply with the order or undertaking in question –
- (a) by the enforcer that made the original application, or
 - (b) by any other enforcer other than a private designated enforcer. 10
- (4) An application to the court in respect of a failure to comply with an undertaking may include an application for a consumer protection order.
- (5) If on an application under this section the court finds that an undertaking is not being complied with, the court may do either or both of the following –
- (a) make a consumer protection order (instead of making any other order it has power to make); 15
 - (b) make an order requiring the respondent to pay a monetary penalty.
- (6) Where an application is made under subsection (4) for an enforcement order or an interim enforcement order –
- (a) sections 146 (directions by CMA) and 147 (consultation) do not apply; 20
 - (b) the application may be made only in respect of a commercial practice that the enforcer considers a person has engaged or is engaging in (and not in respect of a practice that a person is likely to engage in);
 - (c) a power of the court to accept an undertaking instead of making a consumer protection order does not apply, 25
- and the preceding provisions of this Chapter apply subject to this subsection.
- (7) An application may not be made under subsection (3) in the case of a failure to comply with an order or undertaking which consists only of a failure to provide information or documents required by the order or undertaking under section 149(4). 30
- (8) In addition to any right of appeal on a point of law, a person liable to pay a penalty by virtue of an order under subsection (5)(b) may appeal in respect of –
- (a) the decision to impose the penalty, or
 - (b) the nature or amount of the penalty. 35
- (9) In connection with orders under subsection (5)(b), see further –
- (a) section 160, which provides for the amount of penalties, and
 - (b) section 195, which provides for information to accompany such orders.

159 Undertakings to public designated enforcers: further proceedings

- (1) This section applies where a public designated enforcer accepts an undertaking from a person (“the respondent”) under section 155.
- (2) The enforcer may apply to the court in respect of a failure to comply with the undertaking. 5
- (3) An application under subsection (2) may include an application for a consumer protection order.
- (4) If the court finds that the undertaking is not being complied with, the court may do either or both of the following—
 - (a) make a consumer protection order (instead of making any other order it has power to make); 10
 - (b) make an order requiring the respondent to pay a monetary penalty.
- (5) A requirement under subsection (4)(b) to pay a monetary penalty may be imposed only if the court is satisfied that the respondent’s failure in question is without reasonable excuse. 15
- (6) Where an application is made under subsection (2) for an enforcement order or an interim enforcement order—
 - (a) sections 146 (directions by CMA) and 147 (consultation) do not apply;
 - (b) the application may be made only in respect of a commercial practice that the enforcer considers a person has engaged or is engaging in (and not in respect of a practice that a person is likely to engage in);
 - (c) a power of the court to accept an undertaking instead of making a consumer protection order does not apply,and the preceding provisions of this Chapter apply subject to this subsection.
- (7) An application may not be made under subsection (2) in the case of a failure to comply with an undertaking which consists only of a failure to provide information or documents under section 156(4). 25
- (8) In addition to any right of appeal on a point of law, a person liable to pay a penalty by virtue of an order under subsection (4)(b) may appeal in respect of—
 - (a) the decision to impose the penalty, or
 - (b) the nature or amount of the penalty. 30
- (9) In connection with orders under subsection (4)(b), see further—
 - (a) section 160, which provides for the amount of penalties, and
 - (b) section 195, which provides for information to accompany such orders. 35

160 Monetary penalties under sections 158 and 159: amount

- (1) This section applies in relation to a monetary penalty imposed on a person (“the respondent”) by an order made under section 158 or 159.
- (2) The amount of the penalty 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) The penalty must not exceed— 5
- (a) in the case of a fixed amount, £150,000 or, if higher, 5% of the total value of the turnover (if any) of the respondent;
 - (b) in the case of an amount calculated by reference to a daily rate, £15,000 or, if higher, 5% of the total value of the daily turnover (if any) of the respondent; 10
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.
- (4) In imposing a penalty by reference to a daily rate— 15
- (a) no account is to be taken of any days before notice of the application under section 158(3) or 159(2) was given to the respondent, and
 - (b) unless the court determines an earlier date, the amount payable ceases to accumulate on the day on which the requirements of the undertaking that the respondent has failed to comply with are complied with.

Notification of CMA

- 161 Notification requirements: applications** 20
- (1) This section applies to an enforcer that is not the CMA.
- (2) Before making an application for an enforcement order or an interim enforcement order the enforcer—
- (a) must by notice inform the CMA of its intention to do so, and
 - (b) may only proceed to make the application after expiry of the minimum period or, if sooner, after the CMA has by notice informed the enforcer that it consents to the making of the application. 25
- (3) The “minimum period” is—
- (a) in the case of an enforcement order, 14 days beginning with the day on which the notice under subsection (2)(a) is given; 30
 - (b) in the case of an interim enforcement order, 7 days beginning with the day on which the notice under subsection (2)(a) is given.
- (4) Where an enforcer proceeds to make an application for an enforcement order or an interim enforcement order, the enforcer must by notice inform the CMA of the result of the application. 35
- (5) Subsection (6) applies where the enforcer makes an application under section 158 in respect of a failure to comply with—
- (a) an enforcement order or an interim enforcement order, or
 - (b) an undertaking given under section 148 or 151.

- (6) The enforcer must by notice inform the CMA of the making of the application and of any order made by the court on the application.

162 Notification requirements: undertakings

- (1) This section applies to an enforcer that is not the CMA which accepts an undertaking under section 155. 5
- (2) The enforcer must by notice inform the CMA of—
 - (a) the terms of the undertaking, and
 - (b) the identity of the person who gave it.

163 Notification requirements: proceedings

- (1) This section applies where a local weights and measures authority in England and Wales intends to start proceedings for an offence under an enactment listed in Part 1 of Schedule 13. 10
- (2) Before starting the proceedings the authority—
 - (a) must by notice inform the CMA of its intention to do so, and
 - (b) may only start the proceedings on or after the relevant day. 15
- (3) The “relevant day” is—
 - (a) the day on which the CMA notifies the authority that the CMA has received the authority’s notice given under subsection (2)(a), or
 - (b) if sooner, the day beginning 14 days after the day on which that notice was given. 20
- (4) Where the authority starts the proceedings, the authority must by notice inform the CMA of outcome of the proceedings.
- (5) A failure of an authority to comply with a requirement under this section does not invalidate any proceedings started by the authority.

164 Notification requirements: convictions and judgments 25

- (1) This section applies where—
 - (a) a person is convicted of an offence by or before a court in the United Kingdom, or
 - (b) a judgment is given against a person by a court in civil proceedings in the United Kingdom. 30
- (2) The court may make arrangements to bring the conviction or judgment to the attention of the CMA if it appears to the court—
 - (a) having regard to the functions of the CMA under this Chapter or Chapter 4, that it is expedient for the conviction or judgment to be brought to the attention of the CMA, and 35
 - (b) without such arrangements the conviction or judgment may not be brought to the attention of the CMA.

- (3) For the purposes of subsection (2) it is immaterial whether the proceedings have been finally disposed of by the court.
- (4) Judgment includes an order or decree (and references to the giving of a judgment are to be construed accordingly).

Jurisdiction etc

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165 Appropriate court

- (1) This section applies for the purposes of determining the appropriate court in relation to an application for, or the making of, a consumer protection order against a person (“the respondent”) in connection with a relevant infringement.
- (2) If the respondent has a place of business in, or carries on business in, a part of the United Kingdom, the appropriate court is –
 - (a) the High Court or the county court in England and Wales, if the respondent carries on business in England and Wales or has a place of business in England and Wales;
 - (b) the High Court or a county court in Northern Ireland, if the respondent carries on business in Northern Ireland or has a place of business in Northern Ireland;
 - (c) the Court of Session or the sheriff, if the respondent carries on business in Scotland or has a place of business in Scotland.
- (3) If the respondent does not have a place of business in, and does not carry on business in, any part of the United Kingdom, the appropriate court is –
 - (a) the High Court or the county court in England and Wales, if a relevant consumer is domiciled in England or Wales;
 - (b) the High Court or a county court in Northern Ireland, if a relevant consumer is domiciled in Northern Ireland;
 - (c) the Court of Session or the sheriff, if a relevant consumer is domiciled in Scotland.
- (4) References in subsection (3) to a “relevant consumer” are to any consumer –
 - (a) to or for whom goods, services or digital content are supplied in connection with which the relevant infringement has, or is alleged to have, taken place,
 - (b) to whom activities are directed the carrying out of which constitutes, or is alleged to constitute, the relevant infringement, or
 - (c) from whom goods are received in connection with which the relevant infringement has, or is alleged to have, taken place.
- (5) Section 41 of the Civil Jurisdiction and Judgments Act 1982 applies for the purposes of determining the part of the United Kingdom in which a relevant consumer is domiciled.

166 Effect of orders in other parts of the United Kingdom

A consumer protection order made in a part of the United Kingdom by a court specified in relation to that part in the second or third column of the Table has effect in another part of the United Kingdom as if made by a court specified in relation to that other part in the same column of the Table—

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England and Wales	The High Court	The county court
Scotland	The Court of Session	The sheriff
Northern Ireland	The High Court	A county court.

167 Evidence

- (1) Proceedings under this Chapter are civil proceedings for the purposes of—
 - (a) section 11 of the Civil Evidence Act 1968 (convictions admissible as evidence in civil proceedings);
 - (b) section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (corresponding provision in Scotland);
 - (c) section 7 of the Civil Evidence Act (Northern Ireland) 1971 (c.36 (N.I.)) (corresponding provision in Northern Ireland). 15
- (2) In proceedings under this Chapter any finding by a court in civil proceedings that a person has engaged in infringing conduct—
 - (a) is admissible as evidence that the conduct has occurred;
 - (b) unless the contrary is proved, is sufficient evidence that the conduct has occurred. 20
- (3) But subsection (2) does not apply to any finding—
 - (a) which has been reversed on appeal;
 - (b) which has been varied on appeal so as to negate it.
- (4) For the purposes of subsection (2), a person engages in “infringing conduct” if—
 - (a) the person has engaged in a commercial practice that constitutes a relevant infringement, or
 - (b) the person is an accessory to such a practice. 25

Miscellaneous

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168 Interconnected bodies corporate

- (1) This section applies if—
 - (a) a court makes a consumer protection order against a body corporate (“the respondent”), and
 - (b) the interconnection condition applies in relation to the respondent. 35

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- (2) The interconnection condition applies in relation to the respondent if—
- (a) at the time the order is made the respondent is a member of a group of interconnected bodies corporate,
 - (b) at any time when the order is in force the respondent becomes a member of a group of interconnected bodies corporate, or 5
 - (c) at any time when the order is in force a group of interconnected bodies corporate of which the respondent is a member is increased by the addition of one or more further members.
- (3) The order may include provision for the requirements (or any particular requirements) imposed by the order to be binding upon all other members of the group (in addition to the respondent) as if each of them were the respondent. 10
- (4) Provision may be included in an order under subsection (3) only if the court considers it just, reasonable and proportionate to include that provision.
- (5) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other. 15
- (6) Any two bodies corporate are interconnected—
- (a) if one of them is a subsidiary of the other, or
 - (b) if both of them are subsidiaries of the same body corporate.
- (7) Where an order includes provision under subsection (3), a copy of the order must be given to any other member of the respondent’s group in relation to which the requirements imposed by the order are to be binding. 20

169 Enhanced consumer measures: private designated enforcers

- (1) This section applies where—
- (a) an enforcement order is made on the application of a private designated enforcer, 25
 - (b) an undertaking is given under section 148 on an application for an enforcement order made by a private designated enforcer, or
 - (c) an undertaking is given under section 155 to a private designated enforcer. 30
- (2) The enforcement order or undertaking may include a requirement for the taking of any enhanced consumer measures only if both of the following conditions are met.
- (3) The first condition is that the private designated enforcer is specified for the purposes of this section in regulations made by the Secretary of State. 35
- (4) The second condition is that the enhanced consumer measures do not directly benefit the private designated enforcer or an associated undertaking.
- (5) Enhanced consumer measures directly benefiting an enforcer or an associated undertaking include (for example) measures which—

- (a) require a person to pay money to the enforcer or an associated undertaking;
 - (b) require a person to participate in a scheme, administered by the enforcer or associated undertaking, that is designed to recommend persons supplying goods, services or digital content to consumers; 5
 - (c) would give the enforcer or associated undertaking a commercial advantage over any of its competitors.
- (6) An enforcer may be specified in regulations under subsection (3) only if—
 - (a) the functions of the enforcer under this Chapter have been specified under section 24 of the Legislative and Regulatory Reform Act 2006 (functions to which principles under section 21 and code of practice under section 22 apply), so far as capable of being so specified, and 10
 - (b) the Secretary of State is satisfied that to do so is likely to—
 - (i) improve the availability to consumers of redress for relevant infringements, 15
 - (ii) improve the availability to consumers of information which enables them to choose more effectively between persons supplying goods, services or digital content, or
 - (iii) improve compliance with consumer law.
- (7) Subsection (8) applies if— 20
 - (a) an enforcer exercises a function in relation to a person by virtue of this section,
 - (b) the function is a relevant function for the purposes of Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (co-ordination of regulatory enforcement), and 25
 - (c) a primary authority (within the meaning of that Part) has given advice or guidance under section 24A(1) or (2) of that Act—
 - (i) to that person in relation to the function, or
 - (ii) to other local authorities (within the meaning of that Part) with that function as to how they should exercise it in relation to that person. 30
- (8) The enforcer must have regard to the advice or guidance in exercising the function in relation to that person.
- (9) Regulations under this section are subject to the negative procedure.
- (10) In this section “associated undertaking”, in relation to a private designated enforcer, means— 35
 - (a) a parent undertaking or subsidiary undertaking of the enforcer, or
 - (b) a subsidiary undertaking of a parent undertaking of the enforcer, and for this purpose “parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the Companies Act 2006. 40

170 Substantiation of claims

- (1) This section applies where an application for a consumer protection order is made to a court in respect of a relevant infringement involving a contravention of Chapter 1 of Part 4 (protection from unfair trading).
- (2) The court may, for the purpose of considering the application, require a respondent to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of the respondent. 5
- (3) The court may find that a factual claim of a respondent is inaccurate if—
 - (a) the respondent fails to provide evidence of the accuracy of the claim in response to a requirement imposed under subsection (2), or 10
 - (b) the court considers that any such evidence that is provided is inadequate.
- (4) In this section “respondent”, in relation to an application for a consumer protection order, means—
 - (a) where the application is for an enforcement order or an interim enforcement order, the person against whom the order is sought; 15
 - (b) where the application is for an online interface order or an interim online interim order, the person against whom the order is sought or another person who is a party to the proceedings. 20

171 Crown application

- (1) Subject to subsection (2), this Chapter binds the Crown.
- (2) The Crown is not liable for any monetary penalty imposed by virtue of this Chapter. 25

CHAPTER 4

DIRECT ENFORCEMENT POWERS OF CMA

Investigations

172 Power of CMA to investigate suspected infringements

- (1) This section applies where the CMA has reasonable grounds for suspecting that—
 - (a) a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement, or
 - (b) a person is an accessory to such a practice.30
- (2) The CMA may conduct an investigation into the matter. 35

- (3) Where the CMA conducts an investigation, it may publish a notice which (among other things) may –
 - (a) state its decision to conduct the investigation,
 - (b) summarise the matter under investigation (including the industry sectors affected), 5
 - (c) identify, so far as possible, the persons under investigation (including whether they are suspected of falling within subsection (1)(a) or (b)), and
 - (d) indicate the timetable for the conduct of the investigation.
- (4) If after giving a notice under subsection (3) the CMA decides to close an investigation, the CMA must publish a notice confirming that the investigation is to be closed. 10

Infringement notices and penalties

173 Provisional infringement notice

- (1) This section applies where – 15
 - (a) the CMA has started an investigation under section 172 that is continuing, and
 - (b) the condition in subsection (2) is met in respect of any person (“the respondent”) who is subject to the investigation .
- (2) The condition in this subsection is met in respect of the respondent if the CMA has reasonable grounds to believe that – 20
 - (a) the respondent has engaged, is engaging or is likely to engage in a commercial practice constituting a relevant infringement (“the infringing practice”), or
 - (b) the respondent is an accessory to such a practice. 25
- (3) The CMA may give to the respondent a notice under this section (a “provisional infringement notice”).
- (4) A provisional infringement notice must –
 - (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the CMA’s belief that the condition in subsection (2) is met; 30
 - (b) set out proposed directions for the purposes of securing that the respondent complies with subsection (5);
 - (c) invite the respondent to make representations to the CMA about the giving of the notice; 35
 - (d) specify the means by which, and the time by which, such representations must be made.
- (5) The respondent complies with this subsection by –

-
- (a) in the case of a respondent within subsection (2)(a), not continuing or repeating the infringing practice (where it is believed that the respondent has engaged or is engaging in that practice);
 - (b) in the case of a respondent within subsection (2)(b), not consenting to or conniving in the infringing practice; 5
 - (c) in either case, not engaging in the infringing practice in the course of the respondent’s business or another business;
 - (d) in either case, not consenting to or conniving in the carrying out of the infringing practice by a body corporate with which the respondent has a special relationship (see section 212). 10
- (6) If the proposed directions mentioned in subsection (4)(b) include the taking by the respondent of enhanced consumer measures, the notice must state that fact and include details of the proposed measures to be taken (but section 175 applies in respect of any such proposed measures specified in a provisional infringement notice as that section applies to such measures specified in a final infringement notice). 15
 - (7) The means specified under subsection (4)(d) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way.
 - (8) If the CMA is considering the imposition of a monetary penalty on the respondent (see section 174(4)(b)), the provisional infringement notice must also state – 20
 - (a) that the CMA is considering imposing a monetary penalty;
 - (b) the proposed amount of the penalty;
 - (c) any further factors (in addition to those provided under subsection (4)(a)) which the CMA considers may justify the imposition of the proposed penalty and its amount. 25

174 Final infringement notice

- (1) This section applies where – 30
 - (a) the CMA has given to the respondent a provisional infringement notice under section 173,
 - (b) the time for the respondent to make representations to the CMA in accordance with that notice has expired, and
 - (c) after considering such representations (if any), the CMA is satisfied that – 35
 - (i) the respondent has engaged, is engaging or is likely to engage in a commercial practice constituting a relevant infringement, or
 - (ii) the respondent is an accessory to such a practice.
- (2) The CMA may give to the respondent a notice under this section (a “final infringement notice”). 40

- (3) In deciding whether to give a final infringement notice the CMA must, in particular, have regard to whether the respondent has previously given an undertaking under this Chapter or Chapter 3 in respect of the acts or omissions in relation to which the final infringement notice would be given.
- (4) A final infringement notice may impose on the respondent a requirement to do either or both of the following –
 - (a) a requirement to comply with such directions as the CMA considers appropriate for or in connection with the purpose of securing that the respondent complies with section 173(5) (which may include directions to take enhanced consumer measures in accordance with section 175);
 - (b) subject to subsection (5), a requirement to pay a monetary penalty.
- (5) In the case of a respondent within subsection (1)(c)(i), a requirement to pay a monetary penalty may be imposed only if the CMA is satisfied that the respondent has engaged, or is engaging, in a commercial practice constituting a relevant infringement (and not in respect of a practice that the CMA is satisfied that the person is likely to engage in).
- (6) The amount of a monetary penalty imposed under subsection (4)(b) must be a fixed amount not exceeding £300,000 or, if higher, 10% of the total value of the turnover (if any) of the respondent.
- (7) A final infringement notice must –
 - (a) set out the grounds on which it is given, including the respondent’s acts or omissions on account of which the notice is given;
 - (b) state any further factors (in addition to those provided under paragraph (a)) which the CMA considers justify the giving of the notice;
 - (c) if a penalty is imposed by the notice under subsection (4)(b), contain the penalty notice information (see section 195);
 - (d) state that the respondent has a right to appeal against the notice and the main details of that right (so far as not stated in accordance with paragraph (c)).
- (8) A final infringement notice may require the respondent to publish –
 - (a) the notice;
 - (b) a corrective statement.
- (9) Publication under subsection (8) must be made in such form and manner, and to such extent, as the CMA considers appropriate for the purpose of eliminating any continuing effects of the relevant infringement.

175 Final infringement notice: directions to take enhanced consumer measures

- (1) Directions contained in a final infringement notice may include directions requiring the respondent to take such enhanced consumer measures as the CMA considers just and reasonable.

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- (2) For this purpose, in deciding whether to require the taking of enhanced consumer measures the CMA must in particular consider whether any proposed enhanced consumer measures are proportionate having regard to—
- (a) the likely benefit of the measures to consumers,
 - (b) the costs likely to be incurred by the respondent, and
 - (c) the likely cost to consumers of obtaining the benefit of the measures.
- (3) The costs referred to in subsection (2)(b) are—
- (a) the cost of the measures, and
 - (b) the reasonable administrative costs associated with taking the measures.
- (4) Where the respondent is required by a final infringement notice to take enhanced consumer measures, the notice may include requirements for the respondent to provide information or documents to the CMA in order that the CMA may determine if the respondent is taking those measures.
- (5) Subsection (6) applies if—
- (a) a final infringement notice requires the taking of enhanced consumer measures offering compensation, and
 - (b) a settlement agreement is entered into in connection with the payment of compensation.
- (6) A waiver of a person’s rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than conduct which has given rise to the final infringement notice.

Online interface notices

176 Online interface notices

- (1) This section applies where the CMA is satisfied that a person has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement.
- (2) The CMA may give a notice under this section (an “online interface notice”) to—
- (a) the person that the CMA is satisfied has engaged, is engaging or is likely to engage in the commercial practice constituting the relevant infringement, or
 - (b) any other person (subject to subsection (3)).
- (3) A notice under subsection (2)(b) may be given to a person who is outside the United Kingdom only if the person—
- (a) is a United Kingdom national,
 - (b) is an individual who is habitually resident in the United Kingdom,
 - (c) is a firm established in the United Kingdom,
 - (d) carries on business in the United Kingdom or by any means directs activities in the course of carrying on a business to consumers in the United Kingdom.

- (4) An online interface notice may contain whatever directions the CMA considers appropriate for the purpose of requiring the person to whom it is given to do, or to co-operate with another person so that person can do, one or more of the following –
- (a) remove content from, or modify content on, an online interface; 5
 - (b) disable or restrict access to an online interface;
 - (c) display a warning to consumers accessing an online interface;
 - (d) delete a fully qualified domain name and take any steps necessary to facilitate the registration of that domain name by the CMA.
- (5) An online interface notice may be given to a person only if the CMA is satisfied that –
- (a) there are no other available means under section 154 or under another provision of this Chapter of bringing about the cessation or prohibition of the infringement which, by themselves, would be wholly effective, and 15
 - (b) it is necessary for the directions contained in the notice to be given to avoid the risk of serious harm to the collective interests of consumers.
- (6) An online interface notice must –
- (a) set out the grounds on which it is given;
 - (b) state that the respondent has the right to appeal against the notice and the main details of that right. 20
- (7) Where an online interface notice is given, the CMA may publish –
- (a) the notice, and
 - (b) where known, the identity of the person who has engaged, is engaging or is likely to engage in a commercial practice which constitutes the relevant infringement. 25
- (8) Publication under subsection (7) must be made in such form and manner as the CMA considers appropriate for the purpose of eliminating any continuing effects of the relevant infringement.
- (9) For the purposes of subsection (3)(c), a firm is “established in the United Kingdom” if –
- (a) it is incorporated or formed under the law of a part of the United Kingdom, or
 - (b) it is administered under arrangements governed by the law of a part of the United Kingdom. 35
- (10) In subsection (4) “online interface” means any software, including a website, part of a website, an application or other digital content which –
- (a) is operated by a person (“P”) acting for purposes relating to P’s business or by a person acting in the name of, or on behalf of, P, and
 - (b) is operated for or in connection with the purposes of giving access to, or promoting, the goods, services or digital content that P or another person supplies. 40

Undertakings

177 Undertakings

- (1) This section applies where the CMA –
 - (a) has started an investigation under section 172 which is continuing, and 5
 - (b) has not given a final infringement notice or an online interface notice in relation to the matter under investigation.

- (2) The CMA may accept an undertaking under this section in connection with that matter from any person whom the CMA believes –
 - (a) has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement (“the infringing practice”), or 10
 - (b) is an accessory to such a practice.

- (3) An undertaking under this section is an undertaking to do one or more of the following –
 - (a) in the case of an undertaking from a person within subsection (2)(a), not to continue or repeat the infringing practice (where the CMA believes the person has engaged or is engaging in the practice); 15
 - (b) in the case of an undertaking from a person within subsection (2)(b), not to consent to or connive in the infringing practice;
 - (c) in either case, not to engage in the infringing practice in the course of the person’s business or another business; 20
 - (d) in either case, not to consent to, or connive in, the carrying out of the infringing practice by a body corporate with which the person has a special relationship (see section 212).

- (4) Where the CMA has accepted from a person an undertaking under this section – 25
 - (a) the CMA may accept from the person any such variation of the undertaking that the CMA considers appropriate for meeting the purposes for which the undertaking was given;
 - (b) the CMA may release the person from the undertaking (whether on its own initiative or at the person’s request) if the CMA considers that the undertaking is no longer necessary to further those purposes. 30

- (5) The powers of the CMA under this section do not limit other powers of the CMA to accept, vary or release undertakings under Chapter 3.

178 Effect of undertakings under section 177

- (1) This section applies where the CMA accepts an undertaking from a person under section 177 in connection with a matter that it was investigating under section 172.

- (2) The CMA may not give a final infringement notice or an online interface notice to the person in relation to the matter. 40

- (3) Subsection (2) does not prevent the CMA from giving a final infringement notice or an online interface notice to the person—
 - (a) if and to the extent that the notice relates to anything not addressed by the acceptance of the undertaking mentioned in subsection (1);
 - (b) if the CMA considers that there has been a material change of circumstances since the undertaking was accepted; 5
 - (c) if the CMA has reasonable grounds for suspecting that a person from whom the undertaking was accepted has failed to adhere to one or more of the terms of the undertaking;
 - (d) if the CMA has reasonable grounds for suspecting that information which led it to accept the undertaking was incomplete, false or misleading in a material way. 10
- (4) If the CMA gives a final infringement notice or an online interface notice by virtue of subsection (3)(b), (c) or (d), the undertaking is to be treated as released as from the date on which the notice is given. 15

179 Undertakings under section 177: procedural requirements

- (1) This section applies where the CMA proposes to—
 - (a) accept a material variation of an undertaking under section 177, or
 - (b) release a person from any such undertaking.
- (2) Before taking the proposed action mentioned in subsection (1) the CMA must— 20
 - (a) give notice to the person under subsection (3), and
 - (b) consider any representations made in accordance with the notice.
- (3) A notice under this subsection must state—
 - (a) the fact that the CMA is proposing to act as mentioned in subsection (1), 25
 - (b) the reasons for doing so, and
 - (c) the means by which, and the time by which, representations may be made in relation to the proposed action.
- (4) If after considering any representations made in accordance with a notice under subsection (3) the CMA decides to take an action mentioned in subsection (1), the CMA must give notice to the person of that decision. 30
- (5) The reference in subsection (1)(a) to a material variation is a reference to any variation that the CMA considers to be material in any respect.

180 Provisional breach of undertakings enforcement notice 35

- (1) This section applies where—
 - (a) the CMA has accepted an undertaking from a person (“the respondent”) under section 177, and
 - (b) the CMA has reasonable grounds to believe that the respondent has failed to comply with one or more of the terms of the undertaking. 40

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- (2) The CMA may give to the respondent a notice under this section (a “provisional breach of undertakings enforcement notice”).
- (3) A provisional breach of undertakings enforcement notice must –
- (a) set out the grounds on which it is given, including the respondent’s alleged acts or omissions giving rise to the belief mentioned in subsection (1)(b); 5
 - (b) set out proposed directions for the purpose of securing that the respondent complies with subsection (5);
 - (c) invite the respondent to make representations to the CMA about the giving of the notice; 10
 - (d) specify the means by which, and the time by which, such representations must be made.
- (4) The means specified under subsection (3)(d) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way. 15
- (5) The respondent complies with this subsection by –
- (a) in the case of a respondent within section 177(2)(a), not continuing or repeating the infringing practice (where it is believed that the respondent has engaged or is engaging in that practice);
 - (b) in the case of a respondent within section 177(2)(b), not consenting to or conniving in the infringing practice; 20
 - (c) in either case, not engaging in the infringing practice in the course of the respondent’s business or another business;
 - (d) in either case, not consenting to or conniving in the carrying out of the infringing practice by a body corporate with which the respondent has a special relationship (see section 212). 25
- (6) If the CMA is considering the imposition of a monetary penalty on the respondent (see section 181(3)(b)), the provisional breach of undertakings enforcement notice must also state –
- (a) that the CMA is considering imposing a monetary penalty; 30
 - (b) the proposed amount of the penalty (including whether the penalty would be a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate);
 - (c) any further factors (in addition to those provided under subsection (3)(a)) which the CMA considers justify the imposition of the proposed penalty and its amount or amounts. 35

181 Final breach of undertakings enforcement notice

- (1) This section applies where –
- (a) the CMA has given to the respondent a provisional breach of undertakings enforcement notice under section 180, 40

- (b) the time for the respondent to make representations to the CMA in accordance with that notice has expired, and
 - (c) after considering such representations (if any), the CMA is satisfied that the respondent has failed to comply with one or more of the terms of the undertaking. 5
- (2) The CMA may give to the respondent a notice under this section (a “final breach of undertakings enforcement notice”).
- (3) A final breach of undertakings enforcement notice may, subject to subsection (4), impose on the respondent a requirement to do either or both of the following – 10
 - (a) to comply with such directions as the CMA considers appropriate for the purpose of securing that the respondent complies with section 180(5);
 - (b) to pay a monetary penalty in respect of the failure mentioned in subsection (1)(c). 15
- (4) A requirement under subsection (3)(b) to pay a monetary penalty may be imposed only if the CMA is satisfied that the failure in question is without reasonable excuse.
- (5) A final breach of undertakings enforcement notice must – 20
 - (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the failure mentioned in subsection (1)(c);
 - (b) state any further factors (in addition to those provided under paragraph (a)) which the CMA considers justify the giving of the notice;
 - (c) if directions are given under subsection (3)(a), specify the actions to be taken by the respondent in accordance with the directions; 25
 - (d) if a penalty is imposed under subsection (3)(b), specify the monetary penalty information (see section 195).
- (6) The CMA may publish a final breach of undertakings enforcement notice in such manner, and to such extent, as the CMA considers appropriate. 30

182 Monetary penalties under section 181: amount

- (1) This section applies in relation to a requirement imposed on the respondent to pay a monetary penalty under a final breach of undertakings enforcement notice.
- (2) The amount of the penalty must be – 35
 - (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) The penalty must not exceed – 40

- (a) in the case of a fixed amount, £150,000 or, if higher, 5% of the total value of the turnover (if any) of the respondent;
 - (b) in the case of an amount calculated by reference to a daily rate, £15,000 or, if higher, 5% of the total value of the daily turnover (if any) of the respondent; 5
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.
- (4) In imposing a penalty by reference to a daily rate –
- (a) no account is to be taken of any days before the date on which the provisional breach of undertakings enforcement notice was given to the respondent, and 10
 - (b) unless the CMA determines an earlier date, the amount payable ceases to accumulate on the day on which the requirements of the final breach of undertakings enforcement notice are complied with.

Directions 15

183 Provisional breach of directions enforcement notice

- (1) This section applies where –
- (a) an enforcement direction has been given to a person (“the respondent”), and
 - (b) the CMA has reasonable grounds to believe that the respondent has without reasonable excuse failed to comply with the direction (fully or to any respect). 20
- (2) The CMA may give to the respondent a notice under this section (a “provisional breach of directions enforcement notice”).
- (3) A provisional breach of directions enforcement notice must – 25
- (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the belief mentioned in subsection (1)(b);
 - (b) set out proposed directions for the purpose of securing that the respondent complies with the direction; 30
 - (c) invite the respondent to make representations to the CMA about the giving of the notice;
 - (d) specify the means by which, and the time by which, such representations must be made.
- (4) The means specified under subsection (3)(d) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way. 35
- (5) A provisional breach of directions enforcement notice must also state –
- (a) that the CMA is considering imposing a monetary penalty;

- (b) the proposed amount of the penalty (including whether the penalty would be a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate);
 - (c) any further factors (in addition to those provided under subsection (3)(a)) which the CMA considers justify the imposition of the proposed penalty and its amount or amounts. 5
- (6) In this Chapter “enforcement direction” means a direction given in—
 - (a) a final infringement notice,
 - (b) an online interface notice, or 10
 - (c) a final breach of undertakings enforcement notice.

184 Final breach of directions enforcement notice

- (1) This section applies where—
 - (a) the CMA has given to the respondent a provisional breach of directions enforcement notice under section 183 in respect of a suspected failure to comply with an enforcement direction, 15
 - (b) the time for the respondent to make representations to the CMA in accordance with that notice has expired, and
 - (c) after considering such representations (if any), the CMA is satisfied that the respondent has, without reasonable excuse, failed to comply with the direction. 20
- (2) The CMA may give to the respondent a notice under this section (a “final breach of directions enforcement notice”).
- (3) A final breach of directions enforcement notice is a notice that imposes on the respondent a requirement to pay a monetary penalty. 25
- (4) A final breach of directions enforcement notice must—
 - (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the failure mentioned in subsection (1)(c);
 - (b) state any further factors (in addition to those provided under paragraph (a)) which the CMA considers justify the giving of the notice; 30
 - (c) specify the monetary penalty information (see section 195).
- (5) A final breach of directions enforcement notice may—
 - (a) vary or revoke the enforcement direction mentioned in subsection (1);
 - (b) specify such other directions as the CMA considers appropriate for the purpose of securing that the respondent complies with the requirements in respect of which the enforcement direction was given. 35
- (6) The CMA may publish a final breach of directions enforcement notice in such manner, and to such extent, as the CMA considers appropriate.

185 Monetary penalties under section 184: amount

- (1) This section applies in relation to a requirement imposed on the respondent to pay a monetary penalty under a final breach of directions enforcement notice.
- (2) The amount of the penalty must be – 5
 - (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) The penalty imposed on a person must not exceed – 10
 - (a) in the case of a fixed amount, £150,000 or, if higher, 5% of the total value of the turnover (if any) of the respondent;
 - (b) in the case of an amount calculated by reference to a daily rate, £15,000 or, if higher, 5% of the total value of the daily turnover (if any) of the respondent; 15
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.
- (4) In imposing a penalty by reference to a daily rate –
 - (a) no account is to be taken of any days before the date on which the provisional breach of directions enforcement notice was given to the respondent, and 20
 - (b) unless the CMA determines an earlier date, the amount payable ceases to accumulate on the day on which the relevant directions are fully complied with.
- (5) In subsection (4)(b) the “relevant directions” are – 25
 - (a) the enforcement direction mentioned in section 184(1)(a) (if not revoked under section 184(5)(a));
 - (b) any further directions specified under section 184(5)(b).

186 Powers of court to enforce directions

- (1) This section applies where the CMA considers that a person (“the respondent”) has failed to comply with – 30
 - (a) an enforcement direction, or
 - (b) a direction given in a final breach of directions enforcement notice under section 184(5)(b).
- (2) The CMA may make an application to the appropriate court under this section. 35
- (3) If on an application under subsection (2) the court finds that the respondent has failed to comply with the direction concerned, the court may make an order imposing such requirements on the respondent as the court considers appropriate for the purpose of remedying the failure.

- (4) An order under this section may provide for all of the costs or expenses of, and incidental to, the application for the order to be met by the respondent or any officer of a person that is responsible for the respondent’s failure to comply with the direction.
- (5) Nothing in this section limits the powers of the court to make orders under Chapter 3 or otherwise (and an application under this section may be combined with an application under that Chapter for a consumer protection order). 5
- (6) The following provisions of Chapter 3 apply to an order under this section as if the order were a consumer protection order – 10
 - (a) section 165 (appropriate court);
 - (b) section 166 (effect of orders in other parts of the United Kingdom);
 - (c) section 170 (substantiation of claims).

187 Substantiation of claims

- (1) This section applies where – 15
 - (a) the CMA gives a provisional notice under this Chapter to a person (“the respondent”) in respect of a relevant infringement involving a contravention of Chapter 1 of Part 4 (protection from unfair trading), and
 - (b) the respondent makes representations to the CMA in response to that notice. 20
- (2) The CMA may, for the purpose of considering the representations, require the respondent to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of the respondent.
- (3) The CMA may determine that a factual claim of the respondent is inaccurate if – 25
 - (a) the respondent fails to provide evidence of the accuracy of the claim in response to a requirement imposed under subsection (2), or
 - (b) the CMA considers that any such evidence that is provided is inadequate. 30
- (4) In this section “provisional notice” means –
 - (a) a provisional infringement notice,
 - (b) a provisional breach of undertakings enforcement notice, or
 - (c) a provisional breach of directions enforcement notice.

188 Variation or revocation of directions 35

- (1) This section applies where the CMA proposes to –
 - (a) make a material variation of an enforcement direction given to a person (“the respondent”), or
 - (b) revoke any such direction.

-
- (2) Before taking the proposed action mentioned in subsection (1) the CMA must –
- (a) give notice to the respondent under subsection (3), and
 - (b) consider any representations made in accordance with the notice.
- (3) A notice under this subsection must state – 5
- (a) the fact that CMA is proposing to act as mentioned in subsection (1),
 - (b) the reasons for doing so, and
 - (c) the means by which, and the time by which, representations may be made in relation to the proposed variation or revocation.
- (4) If after considering any representations made in accordance with a notice under subsection (3) the CMA decides to take the action mentioned in subsection (1), the CMA must give notice to the respondent of that decision. 10
- (5) The reference in subsection (1)(a) to a material variation is a reference to any variation that the CMA considers to be material in any respect.
- (6) In this section “enforcement direction” includes a direction given in a notice under section 185(5)(b). 15

False or misleading information

189 Provisional false information enforcement notice

- (1) This section applies if –
- (a) the CMA has reasonable grounds to believe that a person (“the respondent”) has, without reasonable excuse, provided information to the CMA that is materially false or misleading, and 20
 - (b) the information was provided in connection with the carrying out by the CMA of a direct enforcement function.
- (2) The CMA may give to the respondent a notice under this section (a “provisional false information enforcement notice”). 25
- (3) A provisional false information enforcement notice must –
- (a) set out the grounds on which it is given;
 - (b) state that the CMA is considering imposing a monetary penalty;
 - (c) state the proposed amount of the penalty; 30
 - (d) state any further factors (in addition to those provided under paragraph (a)) which the CMA considers justify the imposition of the proposed penalty and its amount;
 - (e) invite the respondent to make representations to the CMA about the giving of the notice; 35
 - (f) specify the means by which, and the time by which, such representations must be made.

- (4) The means specified under subsection (3)(f) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way.
- (5) In this Part “direct enforcement function” means—
 - (a) a function of the CMA under this Chapter, or 5
 - (b) a function of the CMA under paragraph 16B or 16C of Schedule 5 to CRA 2015.

190 Final false information enforcement notice

- (1) This section applies where—
 - (a) the CMA has given to the respondent a provisional false information enforcement notice under section 189 in connection with the provision of information, 10
 - (b) the time for the respondent to make representations to the CMA in accordance with the notice has expired, and
 - (c) after considering such representations (if any), the CMA is satisfied that— 15
 - (i) the information mentioned in paragraph (a) is materially false or misleading, and
 - (ii) the respondent provided the false or misleading information without reasonable excuse. 20
- (2) The CMA may give to the respondent a notice under this section (“a final false information enforcement notice”).
- (3) A final false information enforcement notice is a notice that imposes on the respondent a requirement to pay a monetary penalty.
- (4) The amount of the penalty must be a fixed amount not exceeding £30,000 or, if higher, 1% of the total value of the turnover (if any) of the respondent. 25
- (5) A final false information enforcement notice must—
 - (a) set out the grounds on which it is given;
 - (b) state any further factors (in addition to those provided under paragraph (a)) which the CMA considers justify the giving of the notice; 30
 - (c) specify the monetary penalty information (see section 195).
- (6) The CMA may publish a final false information enforcement notice in such manner, and to such extent, as the CMA considers appropriate.

Miscellaneous and appeals

191 Statement of policy in relation to monetary penalties

35

- (1) The CMA must prepare and publish a statement of policy in relation to the exercise of powers to impose a monetary penalty under this Chapter.

- (2) The statement must include a statement about the considerations relevant to the determination of –
 - (a) whether to impose a penalty under this Chapter, and
 - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement. 5
- (4) In preparing or revising its statement of policy the CMA must consult –
 - (a) the Secretary of State, and
 - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under this section without the approval of the Secretary of State. 10
- (6) Subsection (7) applies where the CMA proposes to impose under this Chapter a monetary penalty on a person.
- (7) The CMA must have regard to the statement of policy most recently published under this section at the time of the act or omission giving rise to the penalty in deciding –
 - (a) whether to impose the penalty, and
 - (b) if so, the nature and amount of the penalty. 15

192 Interconnected bodies corporate

- (1) This section applies where –
 - (a) the CMA gives to a body corporate (“the respondent”) a final notice, and
 - (b) the interconnection condition applies in relation to the respondent. 20
- (2) The interconnection condition applies in relation to the respondent if –
 - (a) at the time the final notice is given, the respondent is a member of a group of interconnected bodies corporate, 25
 - (b) at any time when requirements imposed by the final notice remain in force, the respondent becomes a member of a group of interconnected bodies corporate, or
 - (c) at any time when requirements imposed by the final notice remain in force, a group of interconnected bodies corporate of which the respondent is a member is increased by the addition of one or more further members. 30
- (3) The notice may include provision for the requirements (or any particular requirements) imposed by the final notice on the respondent also to be binding upon all other members of the group (in addition to the respondent), as if each of them were the respondent. 35
- (4) Provision may be included in a notice under subsection (3) only if the CMA considers it just, reasonable and proportionate to include that provision.

- (5) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (6) Any two bodies corporate are interconnected –
 - (a) if one of them is a subsidiary of the other, or
 - (b) if both of them are subsidiaries of the same body corporate. 5
- (7) Where a final notice includes provision under subsection (3), the notice must also be given to any other member of the respondent’s group in relation to which the requirements imposed by the notice are to be binding.
- (8) In this section “final notice” means –
 - (a) a final infringement notice, 10
 - (b) an online interface notice, or
 - (c) a final breach of directions enforcement notice.

193 Record-keeping and reporting requirements

- (1) The CMA must keep a record of –
 - (a) undertakings it has accepted and enforcement directions it has given, and 15
 - (b) reviews it has carried out in relation to the effectiveness of such undertakings and directions.
- (2) If requested to do so by the Secretary of State, the CMA must prepare a report on –
 - (a) the effectiveness of undertakings and enforcement directions, and 20
 - (b) the number and outcome of appeals brought under section 194.
- (3) The CMA must –
 - (a) provide to the Secretary of State a report prepared under this section, and 25
 - (b) publish the report in such manner as the CMA considers appropriate.
- (4) In this section –
 - (a) “undertakings” means undertakings given under section 177;
 - (b) “enforcement directions” includes directions given in a notice under section 184(5)(b). 30

194 Appeals

- (1) A person to whom a relevant notice is given may appeal to the appropriate appeal court against –
 - (a) a decision to impose a monetary penalty by virtue of the notice,
 - (b) the nature or amount of any such penalty, or 35
 - (c) the giving of directions by virtue of the notice.
- (2) The grounds for an appeal under subsection (1)(a) or (b) are that –

-
- (a) the decision to impose a monetary penalty was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the amount of the penalty is unreasonable, or
- (d) the decision was unreasonable or wrong for any other reason. 5
- (3) The grounds for an appeal under subsection (1)(c) are that—
- (a) the decision to give the directions was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the nature of the directions is unreasonable, or
- (d) the decision was unreasonable or wrong for any other reason. 10
- (4) On an appeal under this section the appropriate court may quash, confirm or vary the relevant notice.
- (5) An appeal under this section must be brought before the end of the applicable period beginning with the day on which the relevant notice was given to the person seeking to bring the appeal. 15
- (6) The appropriate appeal court may extend the applicable period for bringing an appeal.
- (7) Where an appeal is brought in respect of—
- (a) a requirement to pay a monetary penalty, or
- (b) a requirement to pay compensation under directions imposing enhanced consumer measures, 20
- the penalty or compensation is not required to be paid until after the appeal is determined, withdrawn or otherwise dealt with.
- (8) In this section—
- “applicable period” means— 25
- (a) in relation to a final false information enforcement notice, the period of 28 days;
- (b) in relation to any other relevant notice, the period of 60 days;
- “appropriate appeal court” means—
- (a) in relation to England and Wales or Northern Ireland, the High Court; 30
- (b) in relation to Scotland, the Outer House of the Court of Session;
- “relevant notice” means—
- (a) a final infringement notice,
- (b) an online interface notice, 35
- (c) a final breach of undertakings enforcement notice,
- (d) a final breach of directions enforcement notice, or
- (e) a final false information enforcement notice.

CHAPTER 5

MONETARY PENALTIES: GENERAL PROVISIONS

195 Information to accompany orders or notices imposing monetary penalties

- (1) An order or notice under Chapter 3 or 4 under which a person (“the respondent”) is required to pay a monetary penalty must state the following information (referred to in those Chapters as the “monetary penalty information”)—
 - (a) the amount of the penalty (including whether it is a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate); 10
 - (b) the grounds on which the penalty is imposed together with any other factors that the court (in the case of an order) or the CMA (in the case of a notice) considers justify the giving of the penalty or its amount;
 - (c) in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate; 15
 - (d) how the penalty is to be paid;
 - (e) the date or dates, no earlier than the end of the applicable period beginning with the date on which the order was served on or the notice was given to the respondent, by which the penalty or (as the case may be) different portions of it are required to be paid; 20
 - (f) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid;
 - (g) that the respondent has the right to apply under subsection (3) (in the case of an order) or subsection (4) (in the case of a notice); 25
 - (h) that the respondent has the right to appeal in respect of the imposition of the penalty;
 - (i) the main details of the rights mentioned in paragraphs (g) and (h).
- (2) In subsection (1)(e) “the applicable period” means—
 - (a) in the case of an order or a final false information enforcement notice, the period of 28 days;
 - (b) in any other case, the period of 60 days. 30
- (3) The respondent may, within 14 days of the date on which an order imposing a monetary penalty is served on the respondent, apply to the court for the court to specify a different date or dates by which the penalty, or different portions of it, are to be paid. 35
- (4) The respondent may, within 14 days of the date on which a notice imposing a monetary penalty is given to the respondent, apply to the CMA to specify a different date or dates by which the penalty, or different portions of it, are required to be paid. 40

196 Determination of turnover

- (1) In this Part references to “turnover” of a person include—
 - (a) turnover both in and outside the United Kingdom;
 - (b) where the person controls another person, the turnover of that other person; 5
 - (c) where the person is controlled by another person, the turnover of that person.
- (2) The Secretary of State may by regulations—
 - (a) make provision for determining when a person is to be treated as controlled by another person for the purposes of subsection (1)(b) and (c); 10
 - (b) make provision for determining the turnover of a person for the purposes of this Part.
- (3) Regulations under this section may, in particular, make provision as to—
 - (a) the amounts which are, or which are not, to be treated as comprising a person’s turnover or daily turnover; 15
 - (b) the date or dates by reference to which a person’s turnover or daily turnover is to be determined.
- (4) Regulations under this section may include provision enabling the court or 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 (3)). 20
- (5) Regulations under this section are subject to the negative procedure.

197 Power to amend amounts

- (1) The Secretary of State may by regulations amend any of the following provisions for the purpose of substituting a different monetary amount for an amount of fixed or daily penalty for the time being specified—
 - (a) section 150(5);
 - (b) section 160(3)(a) and (b);
 - (c) section 174(6); 30
 - (d) section 182(3)(a) and (b);
 - (e) section 185(3)(a) and (b);
 - (f) section 190(4).
- (2) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate. 35
- (3) Regulations under this section are subject to the affirmative procedure.

198 Recovery of monetary penalties

- (1) This section applies where a monetary penalty imposed under Chapter 4, or any part of such a penalty, has not been paid by the date on which it is required to be paid and—
 - (a) an appeal to a court against the imposition of the penalty has not been brought before the end of the period within which it is required to be brought, or
 - (b) any such appeal that was brought has been determined, withdrawn or otherwise disposed of.5
- (2) The CMA may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid. 10
- (3) Any such penalty and interest may be recovered summarily (or, in Scotland, recovered) as a civil debt by the CMA.
- (4) Subsection (5) applies where—
 - (a) a penalty is payable by a person by virtue of a final infringement notice,
 - (b) the notice also includes directions imposing a requirement on the person to take enhanced consumer measures, and
 - (c) the enhanced consumer measures that the person is required to take are or include redress measures (see section 213(2)).15 20
- (5) In deciding whether to recover the penalty from the person under subsection (2), the CMA must have regard to—
 - (a) whether any compensation required to be paid to consumers under the redress measures has been, or is likely to be, paid, and
 - (b) where any such payments have not yet been paid (in full or in part), the effect that recovery of the penalty from the person may have on the person's ability to make those compensatory payments.25

199 Monetary penalties: further provision

- (1) If the whole or any portion of a monetary penalty imposed is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the statutory rate. 30
- (2) Where an application has been made under section 195(3) or (4), the penalty is not required to be paid until the application has been determined, withdrawn or otherwise disposed of.
- (3) Where an application has been made to appeal to a court in respect of a monetary penalty, the penalty is not required to be paid until the application has been determined, withdrawn or otherwise disposed of. 35
- (4) If a portion of a monetary penalty imposed by an order of the court has not been paid by the date required for it, the court may, where it considers it appropriate to do so, by order require so much of the penalty as has not 40

- already been paid (and is capable of being paid immediately) to be paid immediately.
- (5) If a portion of a monetary penalty imposed by virtue of a notice given by the CMA has not been paid by the date required for it, the CMA may, where it considers it appropriate to do so, by notice require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately. 5
- (6) Where on an appeal under section 194 the court substitutes a penalty of a different nature or of a lesser amount, the court may require the payment of interest at the statutory rate on the substituted penalty from whatever date it considers appropriate (which may include a date before the determination of the appeal). 10
- (7) In the case of a monetary penalty imposed on a firm that is not a body corporate, the penalty is to be paid out of the assets or funds of the firm.
- (8) *Sums received from a person towards payment of a monetary penalty must be paid –* 15
- (a) *in the case of a penalty imposed by an order of the Court of Session or the Sheriff, into the Scottish Consolidated Fund;*
- (b) *in the case of a penalty imposed by an order of a court in Northern Ireland, into the Consolidated Fund of Northern Ireland;*
- (c) *in any other case, into the Consolidated Fund of the United Kingdom.* 20
- (9) In this section –
- “monetary penalty” means a monetary penalty imposed under Chapter 3 or 4;
- “the statutory rate” means the rate for the time being specified in section 17 of the Judgments Act 1838. 25

CHAPTER 6

INVESTIGATORY POWERS

200 Investigatory powers of enforcers

- (1) Schedule 15 contains amendments to Schedule 5 to CRA 2015 (investigatory powers), including amendments about – 30
- (a) the giving of monetary penalties in connection with a failure to comply with an information notice;
- (b) the giving of information notices to persons outside the United Kingdom;
- (c) the means by which information notices are to be given; 35
- (d) entry to premises where documents are accessible from the premises.
- (2) In subsection (1) “information notice” means a notice given under paragraph 14 of Schedule 5 to CRA 2015.

CHAPTER 7

MISCELLANEOUS

201 Powers to amend Schedule 13 and Schedule 14

- (1) The Secretary of State may by regulations amend—
 - (a) the first column of the Table in Part 1 of Schedule 13 so as to add, remove or vary an entry for an enactment; 5
 - (b) the second column of that Table so as to add, remove or vary an entry providing for the authorised enforcers in respect of an enactment;
 - (c) the third column of that Table in consequence of amendments made under the power conferred by paragraph (a); 10
 - (d) the second column of the Table in Part 2 of Schedule 13 so as to add, remove or vary an entry providing for the authorised enforcers in respect of an obligation or rule of law;
 - (e) Schedule 14 so as to add, remove or vary an entry for an enactment.
- (2) The power under subsection (1)(a) or (e) is exercisable so as to add or vary an entry in respect of an enactment only if, and to the extent that, one or more of the following is provided for under or by virtue of the enactment so added or varied—
 - (a) a duty, prohibition or restriction enforceable by criminal proceedings;
 - (b) a duty owed to a person that is enforceable by civil proceedings; 20
 - (c) a remedy or sanction enforceable by civil proceedings;
 - (d) an agreement or security relating to a supply of goods, services or digital content to be void or unenforceable to any extent;
 - (e) a right or remedy exercisable by a person supplying goods, services or digital content to be restricted or excluded; 25
 - (f) the avoidance (to any extent) of liability relating to the supply of goods, services or digital content to be restricted or prevented.
- (3) It is immaterial for the purposes of subsection (2) whether or not—
 - (a) a duty, prohibition or restriction exists in relation to consumers as such; 30
 - (b) a remedy or sanction is provided for the benefit of consumers as such;
 - (c) proceedings have been brought in relation to the act or omission concerned;
 - (d) a person has been convicted of an offence in relation to the act or omission concerned. 35
- (4) Regulations under this section are subject to the affirmative procedure.

202 Notices under this Part

- (1) This section applies in relation to a notice given to a person under this Part by the CMA or another enforcer.

- (2) The notice may be given by –
- (a) delivering it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at that address, or
 - (d) sending it to the person by email to their email address. 5
- (3) A notice to a body corporate may be given in accordance with subsection (2) to any officer of that body.
- (4) A notice to a partnership may be given in accordance with subsection (2) to any partner or a person who has the control or management of the partnership business. 10
- (5) A notice to a firm that is not a body corporate or a partnership may be given in accordance with subsection (2) to any member of the governing body of the firm.
- (6) A person’s proper address is –
- (a) in a case where the person has specified an address as one at which the person, or someone acting on the person’s behalf, will accept service of notices or other documents, that address; 15
 - (b) in any other case, the address determined in accordance with subsection (7).
- (7) A person’s proper address is (if subsection (6)(a) does not apply) – 20
- (a) in the case of a body corporate, its registered or principal office;
 - (b) in the case of a partnership, the principal office of the partnership;
 - (c) in the case of a firm that is not a body corporate or a partnership, the principal office of the firm;
 - (d) in a case where none of paragraphs (a) to (c) apply, any address at which the enforcer giving the notice believes, on reasonable grounds, that the notice will come to the attention of the person. 25
- (8) A person’s email address is –
- (a) any email address published for the time being by that person as an address for contacting that person, or 30
 - (b) if there is no such published address, any email address by means of which the enforcer believes, on reasonable grounds, that the notice will come to the attention of that person.
- (9) In the case of –
- (a) a body corporate registered outside the United Kingdom, 35
 - (b) a partnership carrying on business outside the United Kingdom, or
 - (c) any other type of firm with offices outside the United Kingdom,
- references to its principal office include references to its principal office in the United Kingdom or, if it has no principal office in the United Kingdom, any place in the United Kingdom where it carries on business or conducts activities. 40

- (10) In this section “officer”, in relation to any body corporate, means a director, manager, secretary or other similar officer of the body.
- (11) This section does not limit any other lawful means of giving notice.

203 Rules

- (1) The CMA may make rules about procedural and other matters in connection with the carrying out of its direct enforcement functions. 5
- (2) Rules may provide for any of the CMA’s direct enforcement functions to be carried out on its behalf –
 - (a) by one or more members of the CMA Board (see Part 2 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013); 10
 - (b) by one or more members of the CMA Panel (see Part 3 of Schedule 4 to that Act);
 - (c) by one or more members of staff of the CMA;
 - (d) jointly by one or more of the persons mentioned in paragraphs (a) to (c). 15
- (3) Rules may (among other things) include provision as to the following matters so far as relating to the carrying out of direct enforcement functions –
 - (a) the form and manner in which a notice given by the CMA under a direct enforcement function is to be given (subject to section 202);
 - (b) the person (or persons) to whom the notice is to be given; 20
 - (c) if the CMA is required to publish the notice, the manner in which it is to do so;
 - (d) arrangements to ensure the protection of confidential information;
 - (e) the disclosure of information to persons under investigation;
 - (f) the form and manner in which representations may or must be made to the CMA; 25
 - (g) the procedure to be followed in relation to the holding of oral hearings as part of an investigation;
 - (h) the procedure to be followed in cases where a person under investigation accepts that there has been a relevant infringement of a kind to which the investigation relates; 30
 - (i) arrangements for the making of, and dealing with, complaints.
- (4) In this section and section 204 “rules” means rules made under this section.

204 Procedural requirements for making of rules

- (1) In preparing rules the CMA must consult such persons as the CMA considers appropriate. 35
- (2) The CMA may not bring a rule into operation until the rule has been approved by regulations made by the Secretary of State.
- (3) The Secretary of State may approve a rule –

-
- (a) in the form in which it is submitted, or
 - (b) subject to whatever modifications the Secretary of State considers appropriate.
- (4) Where the Secretary of State proposes to approve a rule subject to modifications, the Secretary of State must— 5
- (a) inform the CMA of the proposed modifications, and
 - (b) take into account any comments made by the CMA about the proposed modifications.
- (5) The Secretary of State may by regulations— 10
- (a) vary or revoke rules, or
 - (b) direct the CMA to vary or revoke rules in accordance with the direction.
- (6) Subsections (2) to (4) apply to any variation of rules made by the CMA, except where acting under a direction given under subsection (5)(b).
- (7) Regulations under this section are subject to the negative procedure. 15

205 Guidance

- (1) The CMA must prepare and publish guidance about its general approach to the carrying out of its direct enforcement functions.
- (2) Guidance under subsection (1) must provide information about the factors that the CMA will take into account in determining— 20
- (a) whether it will exercise a power under Chapter 4 to accept, vary or release an undertaking;
 - (b) in cases where the exercise of any such power is exercisable only if the CMA considers a person has acted (or failed to act) without a reasonable excuse, whether a reasonable excuse exists; 25
 - (c) in a case where a monetary penalty has not been paid (or paid in full), whether to start proceedings for recovery of the penalty.
- (3) Guidance under subsection (1) may include information about any other matters in connection with the carrying out of direct enforcement functions, including the factors that the CMA will take into account in determining whether to give a notice to a person in the carrying out of those functions. 30
- (4) The CMA—
- (a) must keep the guidance under review, and
 - (b) may from time to time revise or replace the guidance.
- (5) Before issuing the first guidance under this section the CMA must consult— 35
- (a) the Secretary of State, and
 - (b) such other persons as the CMA considers appropriate.
- (6) The CMA must—

- (a) before publishing the first guidance under this section, obtain the approval of the Secretary of State in respect of the proposed guidance;
- (b) before revising or replacing any guidance published under this section, inform the Secretary of State of the proposed revision or replacement.

206 Defamation 5

For the purposes of the law relating to defamation, absolute privilege attaches to anything done by the CMA in exercise of its functions under this Part.

207 Minor and consequential amendments relating to this Part

Schedule 16 contains minor and consequential amendments relating to this Part. 10

208 Transitional and saving provision relating to this Part

Schedule 17 contains transitional and saving provision relating to this Part.

CHAPTER 8

INTERPRETATION OF PART

209 Supply of goods or digital content 15

- (1) This section provides for how references to the supply of goods or digital content are to be read for the purposes of this Part.
- (2) References to a person who supplies goods or digital content are to be read as including references to a person who seeks to supply goods or digital content (and references to a person who receives goods or digital content are to be read in a corresponding way). 20
- (3) The supply of goods includes, in relation to buildings and other structures, construction of them by one person for another.
- (4) References to a person supplying goods under –
 - (a) a hire-purchase agreement, 25
 - (b) a credit-sale agreement, or
 - (c) a conditional sale agreement,are to be read as including references to a person who conducts any antecedent negotiations relating to the agreement.
- (5) The following terms have the meanings given by section 189(1) of the Consumer Credit Act 1974 – 30
 - “antecedent negotiations”;
 - “conditional sale agreement”;
 - “credit sale agreement”;
 - “hire-purchase agreement”. 35

210 Supply of services

- (1) This section provides for how references to the supply of services are to be read for the purposes of this Part.
- (2) References to a person who supplies services are to be read as including references to a person who seeks to supply services (and references to a person who receives services are to be read in a corresponding way). 5
- (3) The supply of services does not include the provision of services under a contract of service or of apprenticeship.
- (4) It is immaterial whether the contract mentioned in subsection (3) –
 - (a) is express or implied, or 10
 - (b) if express, is oral or in writing.
- (5) The supply of services includes –
 - (a) performing for gain or reward any activity other than the supply of goods or digital content;
 - (b) rendering services to order; 15
 - (c) the provision of services by making them available to potential users;
 - (d) making arrangements for sharing the use of electronic communications apparatus by means of a relevant agreement, within the meaning of paragraph 18 of Schedule 3A to the Communications Act 2003 (the electronic communications code); 20
 - (e) agreeing to the full or partial settlement of a consumer’s liabilities or purported liabilities in return for the consumer meeting a demand for payment.

211 Accessories

- (1) This section applies for the purposes of this Part. 25
- (2) A person (“A”) is an accessory to a commercial practice of another person (“B”) if –
 - (a) B is a body corporate,
 - (b) A has a special relationship with B,
 - (c) the commercial practice is one that B has engaged in or is engaging in, and 30
 - (d) the commercial practice takes place with the consent or connivance of A.

212 Special relationships

- (1) This section applies for the purposes of this Part. 35
- (2) A person has a special relationship with a body corporate if the person is –
 - (a) a controller of the body corporate, or

- (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.
- (3) A person is a controller of a body corporate if—
- (a) the directors of the body corporate, or of another body corporate which is its controller, are accustomed to act in accordance with the person’s directions or instructions, or 5
 - (b) either alone or with one or more associates, the person is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller. 10
- (4) A person (“P”) is an associate of an individual if—
- (a) P is the spouse or civil partner of the individual;
 - (b) P is a relative of the individual;
 - (c) P is a relative of the individual’s spouse or civil partner;
 - (d) P is the spouse or civil partner of a relative of the individual; 15
 - (e) P is a spouse or civil partner of a relative of the individual’s spouse or civil partner;
 - (f) P lives in the same household as the individual otherwise than merely because P, or the individual, is the other’s employer, tenant, lodger or boarder; 20
 - (g) P is the relative of a person who is an associate of the individual by virtue of paragraph (f);
 - (h) P has at some time in the past fallen within any of paragraphs (a) to (g);
 - (i) P is in partnership with the individual; 25
 - (j) the individual is an associate of an individual with whom P is in partnership.
- (5) A person (“P”) is an associate of a body corporate if—
- (a) P is a controller of the body corporate, or
 - (b) P is an associate of a person who is a controller of the body corporate. 30
- (6) A body corporate is an associate of another body corporate if—
- (a) the same person is a controller of both;
 - (b) a person (“P”) is a controller of one and persons who are P’s associates are controllers of the other;
 - (c) a person (“P”) is a controller of one and P and persons who are P’s associates are controllers of the other; 35
 - (d) a group of two or more persons is a controller of each company and the groups consist of the same persons;
 - (e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom that person is an associate. 40

- (7) In this section “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

213 Enhanced consumer measures

- (1) References in this Part to “enhanced consumer measures” are references to—
- (a) redress measures (see subsection (2)), 5
 - (b) compliance measures (see subsection (3)), or
 - (c) choice measures (see subsection (4)).
- (2) Redress measures are—
- (a) measures offering compensation or other redress to affected consumers;
 - (b) in cases where the commercial practice constituting a relevant infringement relates to a contract, measures enabling affected consumers the option to terminate (but not vary) the contract; 10
 - (c) in cases where the affected consumers cannot be identified, or cannot be identified without disproportionate cost to the person giving the undertaking in question or against whom the order in question is made, measures intended to be in the collective interests of consumers. 15
- (3) Compliance measures are measures intended to prevent, or reduce the risk of the occurrence or repetition of, the infringing conduct (which may include measures imposed for the purpose of improving compliance with consumer law more generally). 20
- (4) Choice measures are measures intended to enable consumers to choose more effectively between persons supplying goods, services or digital content.
- (5) In this section—
- (a) references to affected consumers are references to consumers who have suffered loss as a result of the infringing conduct or who have otherwise been affected in any other way by the conduct; 25
 - (b) references to the “infringing conduct” are to the conduct that has given rise to the enforcement order or undertaking concerned.

214 Other interpretative provisions

- In this Part— 30
- “business” includes—
- (a) a profession,
 - (b) a trade, craft or undertaking carried on for gain or reward, and
 - (c) the activities of any government department or local or public authority; 35
- “enforcement order” means an order made under section 148;
- “enforcer” means a public designated enforcer or a private designated enforcer;
- “goods” includes—
- (a) immovable property, and 40

- (b) rights and obligations;
- “interim enforcement order” means an order made under section 151;
- “interim online interface order” means an order under section 154;
- “online interface order” means an order under section 153;
- “subsidiary” has the meaning given by section 1159 of the Companies Act 2006; 5
- “supply” includes supply by means of sale, lease, hire or hire purchase;
- “United Kingdom national” means –
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; 10
 - (b) a person who is a British subject under the British Nationality Act 1981;
 - (c) a British protected person within the meaning of that Act.

215 Index of defined expressions

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column. 15

Expression	Provision	
Accessory	Section 211	
Appropriate court	Section 165	20
Business	Section 214	
Commercial practice	Section 140(2)	
Consumer	Section 140(2)	
Consumer protection order	Section 158(2)	
Digital content	Section 311	25
Direct enforcement function	Section 189(5)	
Enactment	Section 311	
Enforcement direction	Section 183(6)	
Enforcement order	Section 214	
Enforcer	Section 214	30
Enhanced consumer measures	Section 213	
Final breach of directions enforcement notice	Section 184(2)	
Final breach of undertakings enforcement notice	Section 181(2)	35

Expression	Provision	
Final false information enforcement notice	Section 190(2)	
Final infringement notice	Section 174(2)	
Goods	Section 214	
Interim enforcement order	Section 214	5
Interim online interface order	Section 214	
Online interface notice	Section 176(2)	
Online interface order	Section 214	
Private designated enforcer	Section 143(2)	
Provisional breach of directions enforcement notice	Section 183(2)	10
Provisional breach of undertakings enforcement notice	Section 180(2)	
Provisional false information enforcement notice	Section 189(2)	15
Provisional infringement notice	Section 173(3)	
Public designated enforcer	Section 143(1)	
Relevant infringement	Section 140	
Special relationship	Section 212	
Subsidiary	Section 214	20
Supply of goods	Section 209	
Supply of services	Section 210	
Trader	Section 140(2)	
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PART 4

CONSUMER RIGHTS AND DISPUTES

CHAPTER 1

PROTECTION FROM UNFAIR TRADING

Introduction

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216 Overview

- (1) This Chapter confers protections on consumers from unfair commercial practices.
- (2) Section 217 sets out what are unfair commercial practices and prohibits the use and promotion of them. 10
- (3) Sections 218 to 222 provide more detail about commercial practices which are unfair because they are misleading, aggressive or omit material information, or because they contravene the requirements of professional diligence.
- (4) Section 223 requires, or confers power on, specified public bodies to enforce the prohibitions in section 217. 15
- (5) Sections 224 to 227 confer rights on consumers in relation to unfair commercial practices and make related provision.
- (6) Section 228 sets out what happens when a trader supplies a product to a consumer that the consumer has not requested. 20
- (7) Sections 229 to 233 create criminal offences in relation to unfair commercial practices and make related provision.
- (8) Sections 234 to 244 contain miscellaneous and interpretative provisions in relation to this Chapter.

Prohibition of unfair commercial practices

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217 Prohibition of unfair commercial practices

- (1) Unfair commercial practices are prohibited.
- (2) The promotion of unfair commercial practices in, or in connection with, a code of conduct by –
 - (a) a person responsible for the content of a code of conduct, or 30
 - (b) a person responsible for monitoring compliance with a code of conduct, is prohibited.
- (3) In this Chapter –

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- “commercial practice” means any act or omission by a trader relating to the promotion or supply of—
- (a) the trader’s product to a consumer,
 - (b) another trader’s product to a consumer, or
 - (c) a consumer’s product to the trader or another trader; 5
- “consumer” means an individual acting for purposes that are wholly or mainly outside the individual’s business;
- “trader” means—
- (a) a person (“P”) acting for purposes relating to P’s business, or
 - (b) a person acting in the name of, or on behalf of, P for purposes relating to P’s business. 10
- (4) A commercial practice is unfair if—
- (a) it is likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise as a result of the practice involving one or more of the following— 15
 - (i) a misleading action (see section 218);
 - (ii) a misleading omission (see section 219);
 - (iii) an aggressive practice (see section 220);
 - (iv) a contravention of the requirements of professional diligence (see section 221), 20
 - (b) it omits material information from an invitation to purchase (see section 222), or
 - (c) it is listed in Schedule 18 (commercial practices which are in all circumstances considered unfair).
- (5) It is immaterial for the purposes of the definition of “commercial practice” in subsection (3) whether the act or omission takes place— 25
- (a) at the time of the promotion or supply in question, or
 - (b) before or after that time.
- (6) It is immaterial for the purposes of the definition of “trader” in subsection (3)— 30
- (a) in relation to paragraph (a) of that definition, whether P is acting personally or through another person acting in P’s name or on P’s behalf;
 - (b) in relation to paragraph (b) of that definition, whether or not the purposes relating to P’s business are the only or main purposes for which the person is acting. 35

218 Misleading actions

- (1) For the purposes of this Chapter, a commercial practice involves a misleading action if the practice involves— 40
- (a) the provision of false or misleading information relating to a product, a trader or any other matter relevant to a transactional decision,

- (b) an overall presentation which is likely to deceive the average consumer about a matter relating to a product, a trader or any other matter relevant to a transactional decision,
 - (c) any marketing of a product which creates confusion, or is likely to create confusion, with any product, trade mark, trade name or other distinguishing mark of another trader, or 5
 - (d) a failure to comply with a requirement in a code of conduct to which subsection (5) applies in circumstances where the trader asserts that the trader acts in compliance with that code.
- (2) In subsection (1)(a), the reference to misleading information includes a reference to information which, although true, is presented in a misleading way. 10
- (3) For the purposes of subsection (1)(b), an overall presentation may be deceiving even if the information it contains is true.
- (4) In subsection (1)(c), the reference to another trader is a reference to a trader other than the trader supplying the product that is being marketed. 15
- (5) This subsection applies to a requirement in a code of conduct if—
 - (a) there is no discretion afforded to the trader in relation to the requirement, and
 - (b) compliance with the requirement is capable of being verified. 20

219 Misleading omissions

- (1) For the purposes of this Chapter, a commercial practice involves a misleading omission if, considering the matters mentioned in subsection (3), the practice—
 - (a) omits material information,
 - (b) omits information which the trader is required under any other enactment to give to a consumer as part of the practice, or 25
 - (c) fails to identify its commercial intent (unless it is already apparent from the context).
- (2) In subsection (1)(a), “material information” means information that the average consumer needs to take an informed transactional decision. 30
- (3) The matters referred to in subsection (1) are—
 - (a) any limitations resulting from the means of communication used in the commercial practice (including limitations of space or time), and
 - (b) any steps taken by the trader to overcome those limitations by providing information by other means. 35
- (4) In this section, references to omitting information include providing information—
 - (a) in a way that is unclear or untimely, or
 - (b) in such a way that the consumer is unlikely to see it.

220 Aggressive practices

- (1) For the purposes of this Chapter, a commercial practice involves an aggressive practice if it uses harassment, coercion or undue influence.
- (2) In determining whether a commercial practice uses harassment, coercion or undue influence, account must be taken of –
 - (a) the nature of the practice; 5
 - (b) the timing and location of the practice;
 - (c) whether the practice involves the use of any threatening or abusive language or behaviour;
 - (d) whether the practice exploits any vulnerability of a consumer (including any vulnerability of a kind mentioned in section 239(4)); 10
 - (e) whether the practice involves a threat to take action which cannot legally be taken;
 - (f) whether the practice requires a consumer to take onerous or disproportionate action in order to exercise rights that the consumer has in relation to a product. 15
- (3) In this section –
 - (a) “coercion” includes the use or threat of physical force;
 - (b) “undue influence” means exploiting a position of power in relation to a consumer so as to apply pressure in a way which significantly limits the consumer’s ability to make an informed decision. 20

221 Contravention of the requirements of professional diligence

For the purposes of this Chapter, a commercial practice involves a contravention of the requirements of professional diligence if the practice falls short of the standard of skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either – 25

- (a) honest market practice in the trader’s field of activity, or
- (b) the general principle of good faith in the trader’s field of activity.

222 Omission of material information from invitation to purchase

- (1) For the purposes of this Chapter, a commercial practice which is an invitation to purchase omits material information if, considering the matters mentioned in subsection (6), it omits any of the information set out in subsection (2). 30
- (2) The information referred to in subsection (1) is –
 - (a) the main characteristics of the product (to the extent appropriate considering the means used to communicate the invitation to purchase and the nature of the product); 35
 - (b) the price, including any taxes (or where the nature of the product is such that the price or taxes cannot be reasonably calculated in advance, the manner in which the price or taxes will be calculated);

- (c) the identity of the trader and the identity of any other person on whose behalf the trader is acting;
 - (d) the business address and, if different, the service address of the trader and any business email address of the trader;
 - (e) in relation to any other person on whose behalf the trader is acting – 5
 - (i) the person’s business address and business email address (if the person has such addresses), and
 - (ii) if different to the person’s business address, the person’s service address;
 - (f) any freight, delivery or postal charges, including any taxes, additional to the price of the product (or where those additional charges or taxes cannot reasonably be calculated in advance, the fact that they may be payable); 10
 - (g) for products involving a right of withdrawal or cancellation, the existence of such a right; 15
 - (h) to the extent that the trader’s practice in relation to any of the arrangements mentioned in subsection (3) departs from the trader’s published practice in relation to those arrangements, the practice which the trader is currently operating;
 - (i) any information which the trader is required under any other enactment to give to a consumer as part of an invitation to purchase. 20
- (3) The arrangements referred to in subsection (2)(h) are –
- (a) the arrangements for payment;
 - (b) the arrangements for delivery of the product;
 - (c) the arrangements for performance; 25
 - (d) the arrangements for handling complaints.
- (4) For the purposes of subsection (2)(c) “identity”, in relation to a trader, means –
- (a) the name of the trader, and
 - (b) if different, the name under which the trader trades.
- (5) For the purposes of subsection (2)(d) – 30
- “business address”, in relation to a person, means –
- (a) where the person is a body corporate, the address of its registered or principal office,
 - (b) where the person is a firm that is not a body corporate, the address of the principal office of the firm, or 35
 - (c) in a case where neither paragraph (a) or (b) applies, the address of the person’s principal place of business;
- “business email address”, in relation to a person, means any email address used by the person for conducting business;
- “service address”, in relation to a person, means the address at which 40
the person will accept service of documents.
- (6) The matters referred to in subsection (1) are –

- (a) any limitations resulting from the means of communication used in the commercial practice (including limitations of space or time), and
 - (b) any steps taken by the trader to overcome those limitations by providing information by other means.
- (7) In this section, references to omitting information include providing information—
- (a) in a way that is unclear or untimely, or
 - (b) in such a way that the consumer is unlikely to see it.
- (8) In this Chapter, “invitation to purchase” means a commercial practice involving the provision of information to a consumer—
- (a) which indicates the characteristics of a product and its price, and
 - (b) which enables, or purports to enable, the consumer to decide whether to purchase the product or take another transactional decision in relation to the product.

Public enforcement

223 Public enforcement

- (1) It is the duty of every local weights and measures authority in Great Britain to enforce in its area the prohibitions in section 217.
- (2) It is the duty of the Department for the Economy in Northern Ireland to enforce the prohibitions in section 217 in Northern Ireland.
- (3) The CMA may also enforce the provisions of this Chapter.
- (4) In exercising functions under this section, every local weights and measures authority in Great Britain, the Department for the Economy in Northern Ireland and the CMA must have regard to the desirability of encouraging control of unfair commercial practices by such established means as it considers appropriate having regard to all the circumstances of the particular case.
- (5) Nothing in this section authorises a local weights and measures authority in Great Britain to bring proceedings in Scotland for an offence.

Consumers’ rights of redress relating to unfair commercial practices

224 Rights of redress

- (1) A consumer has rights of redress under this Chapter if each of the following four conditions is met.
- (2) The first condition is that—
- (a) the consumer enters into a contract with a trader under which the trader supplies a product to the consumer (a “business-to-consumer contract”),

- (b) the consumer enters into a contract with a trader under which—
 - (i) the consumer supplies a product to the trader, and
 - (ii) the trader does not supply a product to the consumer (a “consumer-to-business contract”), or
 - (c) the consumer makes a payment to the trader for the supply of a product (a “consumer payment”). 5
- (3) The second condition is that—
 - (a) the trader engages in a prohibited practice in relation to the product, or
 - (b) in a case where a consumer enters into a business-to-consumer contract for goods or digital content— 10
 - (i) a producer engages in a prohibited practice in relation to the goods or digital content, and
 - (ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it. 15
- (4) The third condition is that the prohibited practice is a significant factor in the consumer’s decision—
 - (a) to enter into the contract mentioned in subsection (2)(a) or (b), or
 - (b) to make the payment mentioned in subsection (2)(c). 20
- (5) The fourth condition is that the product concerned is not a product excluded from the application of rights of redress by regulations under section 225.
- (6) In subsection (3), “producer” means—
 - (a) a manufacturer of the goods or digital content,
 - (b) an importer of the goods or digital content into the United Kingdom, or
 - (c) a person purporting to be such a manufacturer or importer by placing the person’s name, trade mark or other distinctive sign on the goods or by using it in connection with the digital content,and includes a producer acting personally or through another person acting in the producer’s name or on the producer’s behalf. 30
- (7) In this Chapter, “prohibited practice” means an unfair commercial practice involving—
 - (a) a misleading action, or
 - (b) an aggressive practice. 35
- (8) For the purposes of subsection (7), section 217(4)(a) applies as if the reference to a transactional decision were a reference to any decision taken by a consumer to—
 - (a) enter into a business-to-consumer contract,
 - (b) enter into a consumer-to-business contract, or
 - (c) make a consumer payment. 40

225 Rights of redress: further provision

- (1) The Secretary of State may by regulations provide for any of the following descriptions of rights to be exercisable by a consumer who has rights of redress under this Chapter –
 - (a) a right to unwind in respect of a relevant contract or consumer payment; 5
 - (b) a right to a discount in respect of a supply of a product under a relevant contract;
 - (c) a right to damages in respect of financial loss, distress or physical inconvenience or discomfort. 10
- (2) Regulations under this section may include provision –
 - (a) about how a right is to be exercised by the consumer;
 - (b) for an amount of discount mentioned in subsection (1)(b) to be determined in accordance with the regulations;
 - (c) about the circumstances in which damages mentioned in subsection (1)(c) are or are not payable; 15
 - (d) imposing conditions or restrictions on the exercise of a right;
 - (e) about the consequences of the exercise of a right;
 - (f) excluding products of a description specified in the regulations from the application of the rights of redress available under this Chapter. 20
- (3) Provision under subsection (2)(e) about the consequences of the exercise of a right may (among other things) –
 - (a) provide for the termination of a relevant contract;
 - (b) require the trader to make a refund of an amount determined in accordance with the regulations; 25
 - (c) require goods supplied under a relevant contract to be returned or for payment to be made in respect of such goods.
- (4) In this section, “relevant contract” means –
 - (a) a business-to-consumer contract;
 - (b) a consumer-to-business contract. 30
- (5) The first regulations made under this section are subject to the affirmative procedure.
- (6) Any other regulations under this section are subject to the negative procedure.

226 Enforcement of rights of redress

- (1) A consumer with a right to unwind, a right to a discount or a right to damages by virtue of regulations under section 225 may bring a claim in civil proceedings to enforce that right. 35
- (2) In Scotland, proceedings to enforce a right to unwind may be brought before the Sheriff or the Court of Session.

- (3) If in proceedings under this section the consumer establishes that the consumer has one of the rights mentioned in subsection (1), the court must make an order that gives effect to –
 - (a) that right, and
 - (b) any associated obligations of the consumer imposed by regulations under section 225. 5
- (4) The Limitation Act 1980 applies to a claim under this section in England and Wales as if it were an action founded on simple contract.
- (5) The Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) applies to a claim under this section in Northern Ireland as if it were an action founded on simple contract. 10

227 Relationship between rights of redress and other claims relating to prohibited practices

- (1) Nothing in this Chapter affects the ability of a consumer to make a claim under a rule of law or equity, or under an enactment, in respect of conduct constituting a prohibited practice. 15
- (2) But a consumer may not –
 - (a) make a claim to be compensated under a rule of law or equity, or under an enactment, in respect of such conduct if the consumer has been compensated in respect of the conduct by virtue of regulations under section 225, or
 - (b) make a claim to be compensated under this Chapter in respect of such conduct if the consumer has been compensated under a rule of law or equity, or under an enactment, in respect of the conduct. 20

Inertia selling 25

228 Inertia selling

- (1) This section applies where a trader engages in the unfair commercial practice described at paragraph 30 of Schedule 18.
- (2) The consumer is exempted from any obligation to pay for (or provide any other consideration for) the products supplied by the trader. 30
- (3) In the case of a supply of goods that has not been requested, the consumer may, as between the consumer and the trader, use, deal with or dispose of the goods as if they were an unconditional gift to the consumer.
- (4) The absence of a response from a consumer following the supply of the product does not constitute consent from the consumer to comply with the trader’s demand for the consumer to – 35
 - (a) pay for the product;
 - (b) return the product;
 - (c) safely store the product.

Offences relating to unfair commercial practices

229 Offences

- (1) A trader commits an offence if, in breach of section 217(1), the trader engages in an unfair commercial practice which involves a misleading action within section 218(1)(a), (b) or (c) (see section 217(4)(a)(i)). 5
- (2) A trader commits an offence if, in breach of section 217(1), the trader engages in an unfair commercial practice which involves a misleading omission (see section 217(4)(a)(ii)).
- (3) A trader commits an offence if, in breach of section 217(1), the trader engages in an unfair commercial practice which involves an aggressive practice (see section 217(4)(a)(iii)). 10
- (4) A trader commits an offence if, in breach of section 217(1) –
 - (a) the trader engages in an unfair commercial practice which involves a contravention of the requirements of professional diligence (see section 217(4)(a)(iv)), and 15
 - (b) the trader knows, or is reckless as to whether, the commercial practice involves a contravention of the requirements of professional diligence.
- (5) For the purposes of subsection (4) a trader who fails to have regard to whether a commercial practice involves a contravention of the requirements of professional diligence is to be treated as being reckless as to whether it does (regardless of whether the trader has reason to believe that it might). 20
- (6) A trader commits an offence if, in breach of section 217(1), the trader engages in an unfair commercial practice by omitting material information from an invitation to purchase (see section 217(4)(b)).
- (7) A trader commits an offence if, in breach of section 217(1), the trader engages in a commercial practice which is unfair by virtue of it being of a description listed in Schedule 18 (see section 217(4)(c)) other than an excluded description. 25
- (8) The following are excluded descriptions for the purposes of subsection (7) –
 - (a) the description of practice mentioned in paragraph 12 of Schedule 18;
 - (b) the description of practice mentioned in paragraph 29 of that Schedule. 30

230 Defence of due diligence and innocent publication

- (1) It is a defence for a person (“the defendant”) charged with an offence under section 229 to prove –
 - (a) that the commission of the offence was due to –
 - (i) the act or omission of another person, 35
 - (ii) reliance on information given by another person,
 - (iii) a mistake or accident, or
 - (iv) another cause beyond the defendant’s control, and

- (b) that the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the defendant or any other person under the defendant’s control.
- (2) Subsection (3) applies in a case where a person (“the defendant”) has been charged with an offence under section 229 alleged to have been committed by the publication of an advertisement. 5
- (3) It is a defence for the defendant to prove that –
 - (a) the defendant’s business is to publish or arrange for the publication of advertisements,
 - (b) the defendant received the advertisement for publication in the ordinary course of business, and 10
 - (c) the defendant did not know and had no reason to suspect that its publication would amount to the offence with which the defendant is charged.
- (4) A defendant is not entitled to rely on the defence provided by subsection (1) by reason of the matters referred to in paragraph (a)(i) or (a)(ii) of that subsection without the permission of the court unless – 15
 - (a) the defendant has served on the prosecutor a notice in writing giving such information as was then in the defendant’s possession identifying, or assisting in the identification of, the other person, and 20
 - (b) the notice is served on the prosecutor at least seven clear days before the hearing of the proceedings or, in Scotland, at least seven clear days before the trial diet.
- (5) In subsection (3), “advertisement” – 25
 - (a) means anything published (in any form) for the purpose of promoting a product to the public or a section of the public, and
 - (b) includes a catalogue, a circular and a price list.

231 Offences: criminal liability of others

- (1) Subsections (2) and (3) apply where a trader –
 - (a) commits an offence under section 229, or 30
 - (b) would have committed an offence under that section but for a defence under section 230,and the commission of the offence, or of what would have been the offence, is due to the act or omission of another person “P”.
- (2) P commits the offence (whether or not P is a trader and whether or not P’s act or omission is a commercial practice). 35
- (3) P may be charged with and convicted of the offence by virtue of subsection (2) whether or not proceedings are taken against the trader.
- (4) In other provisions of this Chapter (including the rest of this section), references to an offence under section 229 include references to an offence under that section by virtue of subsection (2). 40

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- (5) If an offence under section 229 committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the part of an officer,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 5
- (6) If an offence under section 229 committed by a Scottish partnership is proved –
- (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of a partner,
- the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly. 10
- (7) In other provisions of this Chapter, references to an offence under section 229 include references to an offence under that section by virtue of subsection (5) or (6). 15
- (8) In subsection (5) a reference to an officer of a body corporate includes a reference to –
- (a) a director, manager, secretary or other similar officer, or
 - (b) a person purporting to act as a director, manager, secretary or other similar officer. 20
- (9) In subsection (6), a reference to a partner includes a person purporting to act as a partner.

232 Penalty for offences

- A person guilty of an offence under section 229 is liable – 25
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both). 30

233 Time limit for prosecution

- (1) No proceedings for an offence under section 229 may be commenced after the earlier of –
- (a) the end of the period of 3 years beginning with the date of the commission of the offence, or
 - (b) the end of the period of 1 year beginning with the date of discovery of the offence by the prosecutor. 35
- (2) For the purposes of subsection (1)(b) –

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor discovered the offence is conclusive evidence of that fact, and
 - (b) a certificate stating that matter and purporting to be so signed is to be treated as so signed unless the contrary is proved. 5
- (3) Despite anything in section 127(1) of the Magistrates’ Courts Act 1980, an information relating to an offence under section 229 which is triable by a magistrates’ court in England and Wales may be so tried if it is laid at any time before the end of the period of 12 months beginning with the date of the commission of the offence. 10
- (4) Despite anything in section 136 of the Criminal Procedure (Scotland) Act 1995, summary proceedings in Scotland for an offence under section 229 may be commenced at any time before the end of the period of 12 months beginning with the date of the commission of the offence.
- (5) Despite anything in Article 19(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)), a complaint charging an offence under section 229 which is triable by a magistrates’ court in Northern Ireland may be so tried if it is made at any time before the end of the period of 12 months beginning with the date of the commission of the offence. 15
- (6) For the purposes of subsection (4), subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 applies as it applies for the purposes of that subsection. 20

Miscellaneous

234 Powers to amend this Chapter

- (1) The Secretary of State may by regulations amend Schedule 18 (commercial practices which are in all circumstances considered unfair) so as to – 25
 - (a) add a description of a commercial practice;
 - (b) remove a description of a commercial practice;
 - (c) amend a description of a commercial practice.
- (2) If regulations under subsection (1) amend Schedule 18 so as to add a description of a commercial practice, the regulations must also amend section 229(8) so as to make that practice an excluded description of practice. 30
- (3) The Secretary of State may by regulations amend section 224(7) (rights of redress: prohibited practices) so as to –
 - (a) add further commercial practices that are unfair under this Chapter to the list of prohibited practices; 35
 - (b) remove from the list of prohibited practices any commercial practices that have been added by regulations.
- (4) The Secretary of State may by regulations amend section 222(2) (material information in respect of an invitation to purchase) so as to – 40

- (a) add descriptions of information;
 - (b) modify descriptions of information;
 - (c) remove descriptions of information added by regulations under this subsection.
- (5) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate. 5
- (6) Regulations under this section are subject to the affirmative procedure.

235 Crown application

- (1) Subject to subsection (2), this Chapter binds the Crown.
- (2) The Crown is not criminally liable as a result of anything in this Chapter. 10
- (3) Subsection (2) does not affect the application of any provision of this Chapter in relation to persons in the public service of the Crown.

236 Validity of agreements

Except as resulting from a consumer’s right to redress under this Chapter, a contract or any other agreement is not void or unenforceable by reason only of a breach of the prohibition in section 217(1) or (2) (prohibition of unfair commercial practices or the promotion of unfair commercial practices). 15

Interpretation

237 Meaning of “transactional decision”

In this Chapter, “transactional decision” means any decision made by a consumer relating to— 20

- (a) the purchase or supply of a product (including whether, how or on what terms to make the purchase or supply);
- (b) the retention, disposal or withdrawal of a product (including whether, how or on what terms to retain or dispose of it); 25
- (c) the exercise of contractual rights in relation to a product (including whether, how or on what terms to exercise such rights).

238 Meaning of “average consumer”: general

- (1) This section provides for how references to the average consumer are to be read for the purposes of this Chapter. 30
- (2) The average consumer is—
 - (a) reasonably well informed,
 - (b) reasonably observant, and
 - (c) reasonably circumspect.

- (3) The average consumer is to be treated as not knowing information in relation to a commercial practice where such information has been concealed by the trader (even if the average consumer might know the information from another source).
- (4) Where a commercial practice is directed at a particular group, the average consumer is an average member of that group (and the attributes of the average consumer in subsection (2) are to be read accordingly). 5
- (5) This section is subject to section 239.

239 Meaning of “average consumer”: vulnerable persons

- (1) Subsection (2) applies where a group of consumers is particularly vulnerable to a commercial practice in a way that the trader could reasonably be expected to foresee. 10
- (2) References in this Chapter to the average consumer, so far as relating to cases to which this subsection applies, are to be read as references to an average member of the group mentioned in subsection (1) (and the attributes of the average consumer in section 238(2) are to be read accordingly). 15
- (3) For the purposes of subsection (1), the reference to a group of consumers being particularly vulnerable to a commercial practice—
 - (a) is a reference to the members of the group being particularly vulnerable to the commercial practice causing them to take a transactional decision that they would not have taken otherwise, and 20
 - (b) includes a reference to a group of consumers being vulnerable to a practice because of the product to which it relates.
- (4) For the purposes of subsection (1), a group of consumers may be vulnerable as a result of (among other things)— 25
 - (a) their age;
 - (b) their physical or mental health;
 - (c) their credulity;
 - (d) the circumstances they are in.

240 Meaning of “product”

- (1) In this Chapter, “product” means— 30
 - (a) goods;
 - (b) a service;
 - (c) digital content.
- (2) For the purposes of this Chapter, a trader agreeing to the full or partial settlement of a consumer’s liabilities or purported liabilities in return for the consumer meeting a demand for payment is supplying a service. 35

241 General interpretation

In this Chapter –

“business” includes –

- (a) a trade, craft or profession;
- (b) any other undertaking carried on for gain or reward; 5
- (c) the activities of any government department or local or public authority;

“code of conduct” means an agreement or set of rules which defines the behaviour of traders who choose to be bound by it;

“goods” includes – 10

- (a) immoveable property, and
- (b) rights and obligations,

but includes water, gas and electricity only if they are put up for sale in a limited volume or set quantity;

“supply”, in relation to a product, includes supply by means of sale, lease, hire or hire purchase. 15

242 Index of defined terms

In this Chapter, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column. 20

Expression	Provision	
Aggressive practice	Section 220	
Average consumer	Sections 238 and 239	
Business	Section 241	
Business-to-consumer contract	Section 224(2)(a)	25
Code of conduct	Section 241	
Commercial practice	Section 217(3)	
Consumer	Section 217(3)	
Consumer payment	Section 224(2)(c)	
Consumer-to-business contract	Section 224(2)(b)	30
Contravention of the requirements of professional diligence	Section 221	
Enactment	Section 311	
Goods	Section 241	
Invitation to purchase	Section 222(8)	35

Expression	Provision	
Misleading action	Section 218	
Misleading omission	Section 219	
Product	Section 240	
Prohibited practice	Section 224(7)	5
Supply	Section 241	
Trader	Section 217(3)	
Transactional decision	Section 237	
Unfair commercial practice	Section 217(4)	

Consequential amendments and transitional provision 10

243 Consequential amendments etc relating to this Chapter

- (1) The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277) are revoked.
- (2) In paragraph 10 of Schedule 5 to CRA 2015 (investigatory powers: enforcer’s legislation), at the appropriate place insert— 15
 “Section 223(1), (2) or (3) of the Digital Markets, Competition and Consumers Act 2023.”
- (3) In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008, at the appropriate place insert— 20
 “Digital Markets, Competition and Consumers Act 2023, Chapter 1 of Part 4.”.
- (4) In paragraph 1 of Schedule 1 to the Prescription and Limitation (Scotland) Act 1973, after paragraph (af) insert— 25
 “(ag) to any obligation arising by virtue of rights of redress under Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2023;”.

244 Transitional and saving provision relating to this Chapter

- (1) This Chapter applies only in relation to an act or omission which takes place on or after the commencement date.
- (2) The CPUTR 2008 continue to have effect in relation to any act or omission which takes place before the commencement date. 30
- (3) In this section—

“the commencement date” means –

- (a) for the purposes of the saving by subsection (2) of Part 4A of the CPU TR 2008 (and other provisions of those Regulations so far as relating to that Part), the date on which the first regulations made under section 225 come into force;
- (b) for all other purposes, the date on which section 217 comes into force;

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“CPU TR 2008” means the Consumer Protection from Unfair Trading Regulations 2008.

CHAPTER 2

10

SUBSCRIPTION CONTRACTS

Introduction

245 Overview

- (1) This Chapter –
 - (a) imposes duties on traders in relation to subscription contracts,
 - (b) provides rights for consumers if those duties are breached, and
 - (c) provides rights for consumers to cancel subscription contracts during cooling-off periods.
- (2) Sections 246 and 247 set out what is a “subscription contract” for the purposes of this Chapter.
- (3) Sections 248 to 253 impose duties on traders in relation to subscription contracts.
- (4) Sections 254 and 255 provide rights for consumers to cancel subscription contracts if traders breach those duties.
- (5) Sections 256 to 258 provide rights for consumers to cancel subscription contracts during cooling-off periods.
- (6) Section 259 confers powers to make further provision about the cancellation of subscription contracts under this Chapter.
- (7) Sections 260 to 263 make provision for the offence of failing to provide information about cooling-off rights.
- (8) Sections 264 to 273 contain miscellaneous provisions in relation to this Chapter.

246 Meaning of “subscription contract”

- (1) For the purposes of this Chapter, a subscription contract is a contract between a trader and a consumer –
 - (a) for the supply of goods, services or digital content by the trader to a consumer in exchange for payment by the consumer,

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- (b) to which either or both of subsections (2) and (3) apply, and
 - (c) which is not an excluded contract (see section 247).
- (2) This subsection applies to a contract if it contains terms which have the effect of providing—
 - (a) for an automatically recurring, or continuing, supply of goods, services or digital content to the consumer for an indefinite period or a fixed period, 5
 - (b) for the consumer to automatically incur liability for each supply, or recurring liabilities for the continuing supply, and
 - (c) a right for the consumer to bring the contract to an end. 10
- (3) This subsection applies to a contract if it contains terms which have the effect of providing—
 - (a) for a supply of goods, services or digital content to a consumer free of charge, or at a rate specified in the contract (the “original rate”), for a period specified in the contract, 15
 - (b) for the consumer to become automatically liable for payments, or payments at a rate higher than the original rate, for supplies after that period (including where the trader has an option to impose a charge or a higher charge after the end of the period), and
 - (c) a right for the consumer to bring the contract to an end before such liability is incurred. 20
- (4) In this Chapter, references to a consumer’s right to bring a subscription contract to an end are references to a right provided under the contract which—
 - (a) in the case of a contract for a fixed period, may be exercised to bring the contract to an end before the end of the fixed period; 25
 - (b) in any case, may be exercised without the consumer incurring any penalty which is more than nominal,and include references to a right that is expressed in terms of a right to stop a subscription contract from automatically renewing or continuing or any other similar expression. 30

247 Excluded contracts

- (1) A contract is an excluded contract for the purposes of this Chapter if, and to the extent that, it is of a description set out in Schedule 19.
- (2) The Secretary of State may by regulations amend Schedule 19 so as to add, remove or modify a description of a contract. 35
- (3) The power under subsection (2) includes power to provide for a contract to be an excluded contract—
 - (a) generally for the purposes of this Chapter, or
 - (b) only for such purposes of this Chapter as are specified. 40
- (4) Regulations under subsection (2) are subject to the affirmative procedure.

Duties of traders

248 Pre-contract information

- (1) Before a trader enters into a subscription contract with a consumer, the trader must—
 - (a) give to the consumer the information set out in Part 1 of Schedule 20 (“key pre-contract information”), and 5
 - (b) give, or make available, to the consumer the information set out in Part 2 of Schedule 20 (“full pre-contract information”) so far as that information is applicable to the contract and not already apparent from the context. 10
- (2) The duty imposed by subsection (1) must be carried out—
 - (a) as close in time to entering into the contract as is practicable,
 - (b) in accordance with subsections (3) and (4), and
 - (c) in accordance with any other requirements specified in regulations under section 269(1)(a). 15
- (3) Key pre-contract information must be given under subsection (1)(a) in accordance with the following requirements—
 - (a) it must all be given together;
 - (b) it must be given separately from the full pre-contract information and any other information; 20
 - (c) in relation to a contract entered into in person, it must be given in writing and on a durable medium;
 - (d) in relation to a contract entered into online and remotely (but not orally), it must be given in writing and in such a way that the consumer is not required to take any steps to read the information, other than the steps the consumer must take to enter into the contract; 25
 - (e) in relation to a contract entered into orally and remotely, it must be given orally.
- (4) Full pre-contract information must be given, or made available, under subsection (1)(b) in accordance with the following requirements— 30
 - (a) it must all be given, or made available, together;
 - (b) in relation to a contract entered into in person, it must be given in writing and on a durable medium.
- (5) For the purposes of this section, information is made available to a consumer only if the consumer can reasonably be expected to— 35
 - (a) know how to access it, and
 - (b) be able to access it;
- (6) For the purposes of this Chapter—
 - (a) references to a contract being entered into in person are references to it being entered into in the simultaneous physical presence of the trader and the consumer; 40

- (b) references to a contract being entered into remotely are references to it being entered into without the simultaneous physical presence of the trader and the consumer.
- (7) The Secretary of State may by regulations amend Parts 1 and 2 of Schedule 20 so as to add, modify or remove descriptions of information. 5
- (8) Regulations under subsection (7) are subject to the affirmative procedure.

249 Pre-contract information: additional requirements

- (1) Subsections (2) and (3) apply in relation to a subscription contract entered into online.
- (2) The trader must ensure that the final step which the consumer is required to take to enter into the contract involves the consumer expressly acknowledging that the contract imposes an obligation on the consumer to make payments to the trader. 10
- (3) The trader must ensure that the information mentioned in subsection (4) is given to a consumer – 15
 - (a) in writing and in such a way that the consumer is not required to take any steps to read the information, other than the steps the consumer must take to enter into the contract, and
 - (b) in accordance with any other requirement specified in regulations under section 269(1)(a). 20
- (4) The information referred to in subsection (3) is –
 - (a) whether there are any restrictions on the delivery of the product to be supplied under the contract, and
 - (b) which means of payment are accepted in relation to the product.
- (5) If the trader does not comply with subsection (2), the consumer is not bound by the subscription contract. 25
- (6) Subsection (7) applies in relation to a subscription contract entered into orally and remotely.
- (7) If a trader contacts the consumer, the trader must, from the outset, disclose – 30
 - (a) the trader’s identity,
 - (b) where applicable, the identity of the person on whose behalf the trader is making contact, and
 - (c) the commercial purpose of making contact with the consumer.
- (8) In cases where – 35
 - (a) the contract has been entered into in person, and
 - (b) the consumer has signed the contract,the trader must give to the consumer a copy of the signed contract immediately after the consumer has signed the contract.

-
- (9) In cases where full pre-contract information has not been given under section 248(1)(b) in writing on a durable medium before the contract is entered into, the trader must give the consumer that information in writing on a durable medium as soon as reasonably practicable after the contract has been entered into and – 5
- (a) where goods are to be supplied under the contract, before the supply of any goods;
 - (b) where services are to be supplied under the contract, before the supply of any service.
- 250 Reminder notices** 10
- (1) Where a trader enters into a subscription contract with a consumer, the trader must give to the consumer a notice (referred to in this Chapter as a “reminder notice”) in respect of –
- (a) the first renewal payment for which the consumer will become liable under the contract, and 15
 - (b) each subsequent renewal payment to which subsection (2) applies.
- (2) This subsection applies to a renewal payment –
- (a) if it is the last (or only) renewal payment for which the consumer will become liable during the period of six months beginning with the relevant day, or 20
 - (b) if the consumer will not become liable for any renewal payment during that period, if it is the first renewal payment for which the consumer will become liable after the end of that period.
- (3) In subsection (2), “the relevant day” means the day on which the consumer became liable for the last preceding renewal payment, before the renewal payment mentioned in that subsection, in respect of which a reminder notice was required to be given under subsection (1). 25
- (4) In this Chapter, a “renewal payment”, in relation to a subscription contract, means a payment for which the consumer could avoid liability by exercising a right to bring the contract to an end. 30
- (5) Section 251 contains further provision about –
- (a) the contents of reminder notices,
 - (b) the times at which they must be given, and
 - (c) how they must be given.
- 251 Content and timing etc of reminder notices** 35
- (1) A reminder notice must contain –
- (a) the information set out in Part 3 of Schedule 20, and
 - (b) any other information required by regulations under section 269(1)(b), and that information must be given to the consumer all together.
- (2) A reminder notice must be given – 40

- (a) in accordance with subsections (3) to (9),
 - (b) separately from the giving of any other information, and
 - (c) in accordance with any other requirements specified in regulations under section 269(1)(a).
- (3) A reminder notice must be given— 5
 - (a) at least 3 working days before the last cancellation date, but
 - (b) not more than 5 working days before the last cancellation date.
- (4) The “last cancellation date”, in relation to a reminder notice, means the last day on which the consumer could avoid becoming liable for the renewal payment to which the notice relates by exercising a right to bring the contract to an end. 10
- (5) Where subsection (6) applies, a reminder notice must be given twice, as follows—
 - (a) the notice must first be given—
 - (i) at least 10 working days before the last cancellation date, but 15
 - (ii) not more than 14 working days before the last cancellation date, and
 - (b) the notice must be given again in accordance with subsection (3).
- (6) This subsection applies where—
 - (a) the consumer will not become liable for a further renewal payment until after the end of the 12-month period, or 20
 - (b) the consumer will not become liable for any further renewal payment but the contract continues beyond the end of the 12-month period.
- (7) In subsection (6), the “12-month period” means the period of 12 months beginning with the day before the day on which the consumer will become liable for the renewal payment to which the reminder notice relates. 25
- (8) Subsection (9) applies where there are insufficient days between the day that a contract is entered into and the last cancellation date in respect of the first renewal payment under the contract for the requirements of subsection (3) or (5) to be met in respect of the reminder notice relating to that renewal payment. 30
- (9) Where this subsection applies—
 - (a) the requirements of subsection (3) and (5) do not apply, and
 - (b) the question of when a reminder notice is to be given is to be determined in accordance with provision made in regulations under section 269(1)(a). 35

252 Arrangements for consumers to exercise right to end contract

- (1) A trader must make arrangements to enable a consumer to exercise a right to bring a subscription contract to an end—
 - (a) in a single communication, 40

-
- (b) without having to take any steps which are not reasonably necessary for bringing the contract to an end.
 - (2) A consumer may, alternatively, exercise a right to bring a subscription contract to an end by notifying the trader in accordance with subsection (6) that the consumer is bringing the contract to an end. 5
 - (3) A consumer may exercise a right to bring a subscription contract to an end at any time permitted by regulations under section 269(1)(c).
 - (4) In relation to a subscription contract entered into online, arrangements under subsection (1) must –
 - (a) enable a consumer to bring the contract to an end online, and 10
 - (b) ensure that instructions for doing so are displayed online in a place or places that a consumer seeking to end the contract is likely to find them.
 - (5) Arrangements under this section must comply with any other requirements specified in regulations under section 269(1)(c). 15
 - (6) A notification under subsection (2) –
 - (a) may be given by any means, but
 - (b) must be sufficiently clear for the purpose of informing the trader that the consumer is bringing the contract to an end.
- 253 Duties of trader on cancellation or end of subscription contract** 20
- (1) This section applies where a consumer –
 - (a) has exercised a right under this Chapter to cancel a subscription contract, or
 - (b) has exercised a right to bring a subscription contract to an end.
 - (2) The trader must – 25
 - (a) give the consumer a notice acknowledging that fact (referred to in this Chapter as an “end of contract notice”), and
 - (b) if an overpayment has been received by the trader from the consumer, refund that overpayment.
 - (3) An end of contract notice must set out – 30
 - (a) the date on which the contract was or will be cancelled or on which it came, or will come, to an end, and
 - (b) any other information required by regulations under section 269(1)(b).
 - (4) An end of contract notice must be given – 35
 - (a) in accordance with subsection (5),
 - (b) in writing on a durable medium, and
 - (c) in accordance with any other requirements specified in regulations under section 269(1)(a).
 - (5) An end of contract notice must be given –

- (a) before the end of such period as may be specified in regulations under section 269(1)(a), or
- (b) if no such period is specified –
 - (i) in the case of a consumer exercising a right mentioned in subsection (1) by giving a notification online, before the end of the period of 24 hours from the time that the consumer gives the notification; 5
 - (ii) in a case where the consumer exercises such a right by giving a notification in any other way, before the end of the period of 3 working days beginning with the day after the day that the consumer gives that notification. 10
- (6) In subsection (2)(b) “overpayment”, in relation to a subscription contract, means any payment made by the consumer for which the consumer is not liable as a result of cancelling the subscription contract or bringing it to an end. 15

Rights of consumers to cancel contract for breach

254 Terms implied into contracts

A trader’s compliance with the following duties is an implied term in every subscription contract –

- (a) the duty set out in section 248(1)(a) (key pre-contract information); 20
- (b) the duty set out in section 248(1)(b) (full pre-contract information);
- (c) the duty set out in section 250(1) (reminder notices);
- (d) the duty set out in section 252(1) (arrangements for consumer to end contract);
- (e) the duties set out in section 253(2) (end or cancellation of subscription contract). 25

255 Right to cancel for breach of implied term

- (1) This section applies where a trader is in breach of the term implied into a subscription contract by section 254(a), (c) or (d).
- (2) The consumer has the right to cancel the contract. 30
- (3) The right is exercisable by the consumer notifying the trader in accordance with subsection (4) that the consumer is cancelling the contract.
- (4) A notification under subsection (3) –
 - (a) may be given by any means, but
 - (b) must be sufficiently clear for the purpose of informing the trader that the consumer is cancelling the contract. 35
- (5) A subscription contract is cancelled from the time the notification is given.
- (6) Where a subscription contract is cancelled under this section –

-
- (a) the cancellation ends both the trader’s and the consumer’s obligations to perform the contract in respect of any rights or liabilities that would arise (but for the cancellation) after the time at which the contract was cancelled,
 - (b) the consumer’s liability for payments that have arisen under the contract is extinguished to any extent set out in regulations under section 259(1)(b) (and, accordingly, the consumer may be entitled to a refund), and 5
 - (c) any other provision made under those regulations in relation to the treatment of goods, services or digital content supplied under a cancelled subscription contract applies. 10
- (7) No penalty or charge may be imposed on a consumer for cancelling a subscription contract under subsection (2).
- (8) For further provision about the exercise of a right to cancel under this section, see section 259. 15

Cooling-off rights

256 Right to cancel during cooling-off periods

- (1) A consumer has the right to cancel a subscription contract during –
 - (a) the initial cooling-off period, and
 - (b) any renewal cooling-off period. 20
- (2) The right conferred by subsection (1) –
 - (a) is exercisable in any circumstances, and
 - (b) may not be subject to any conditions other than those set out in or under this Chapter.
- (3) The right is exercisable by the consumer notifying the trader in accordance with subsection (4) that the consumer is cancelling the contract. 25
- (4) A notification under subsection (3) –
 - (a) may be given by any means, but
 - (b) must be sufficiently clear for the purpose of informing the trader that the consumer is cancelling the contract. 30
- (5) A subscription contract is cancelled from the time that such a notification is given.
- (6) Where a subscription contract is cancelled under this section –
 - (a) the cancellation ends both the consumer’s and the trader’s obligations to perform the contract in respect of any rights or liabilities that would arise (but for the cancellation) after the time at which the contract was cancelled, 35
 - (b) the consumer’s liability for payments that have arisen under the contract is extinguished to any extent set out in regulations under

- section 259(1)(b) (and, accordingly, the consumer may be entitled to a refund), and
- (c) any other provision made under those regulations in relation to the treatment of goods, services or digital content supplied under a cancelled subscription contract applies. 5
- (7) No penalty or charge may be imposed on a consumer for cancelling a contract under subsection (1).
- (8) For further provision about the exercise of a right to cancel under this section, see section 259.
- 257 Meaning of “initial cooling-off period” and “renewal cooling-off period” 10**
- (1) In this Chapter, the “initial cooling-off period”, in relation to a subscription contract, means the period—
- (a) beginning with the day the contract is entered into, and
- (b) ending—
- (i) in the case of a contract under which goods are supplied, at the end of the period of 14 days beginning with the day after the day on which the consumer receives the first supply of goods under the contract; 15
- (ii) in any other case, at the end of the period of 14 days beginning with the day after the day on which the contract is entered into. 20
- (2) In this Chapter, a “renewal cooling-off period”, in relation to a subscription contract, means a period—
- (a) beginning with the day on which a relevant renewal of the contract occurs, and 25
- (b) ending at the end of the period of 14 days beginning with the day after that day.
- (3) A “relevant renewal” of a subscription contract occurs for the purposes of subsection (2)—
- (a) when the consumer becomes liable under the contract for a first renewal payment following the end of a concessionary period, or 30
- (b) at any time when the consumer becomes liable under the contract for a renewal payment and either—
- (i) the consumer will not become liable for the next renewal payment until after the end of the 12-month period, or 35
- (ii) the consumer will not become liable for any further renewal payment but the contract continues beyond the end of the 12-month period.
- (4) In subsection (3)—
- (a) in paragraph (a), “concessionary period” means a period of time mentioned in section 246(3)(a), and 40

- (b) in paragraph (b), the “12-month period” means the period of 12 months beginning with the day before the day on which the consumer became liable for the renewal payment.
- (5) For the purposes of subsection (1)(b)(i), the first supply of goods under a subscription contract is not to be treated as having taken place until such time as the consumer receives all of the goods that the consumer is due to receive as part of that supply. 5
- (6) This section is subject to such extensions of a cooling-off period as may be provided for by regulations under section 259(1)(c).
- 258 Cooling-off notice** 10
- (1) In relation to each renewal cooling-off period, a trader must give the consumer a notice (referred to in this Chapter as a “cooling-off notice”).
- (2) A cooling-off notice must set out –
- (a) that the subscription contract is continuing,
 - (b) that the consumer has a right to cancel the subscription contract during the cooling-off period to which the notice relates, 15
 - (c) when that period begins and ends,
 - (d) how the consumer may exercise the right to cancel,
 - (e) if the consumer may lose the right, the circumstances under which that will happen, 20
 - (f) the consequences of the consumer exercising the right, including –
 - (i) any refund the consumer may be entitled to,
 - (ii) any reason that refund might be diminished, and
 - (iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, and 25
 - (g) any other information required by regulations under section 269(1)(b).
- (3) A cooling-off notice must be given –
- (a) on the first day of the renewal cooling-off period to which it relates or as soon as reasonably practicable after that day, 30
 - (b) separately from the giving of any other information, and
 - (c) in accordance with any other requirements specified in regulations under section 269(1)(a).

Cancellation of contracts under this Chapter: further provision

- 259 Cancellation of subscription contract: further provision** 35
- (1) The Secretary of State may by regulations make provision –
- (a) about the exercise of the rights of a consumer to cancel a subscription contract under this Chapter;
 - (b) about the consequences that follow a consumer exercising such rights;

- (c) extending a cooling-off period in such cases, and to such extent, as the regulations may specify.
- (2) Regulations under subsection (1)(a) may include provision—
 - (a) requiring a right to cancel to be exercised before the end of a specified period; 5
 - (b) imposing other conditions or restrictions on the exercise of a right to cancel.
- (3) Regulations under subsection (1)(b) may include provision—
 - (a) setting out the extent to which a consumer’s liability for payments that have arisen under a cancelled subscription contract are extinguished; 10
 - (b) as a consequence of provision made under paragraph (a), requiring a trader to refund a consumer for payments the consumer has made under the contract;
 - (c) treating the consumer as having paid for goods, services or digital content received under a cancelled subscription contract; 15
 - (d) about the trader’s right to recover goods or digital content that have been supplied under a cancelled subscription contract;
 - (e) setting out the consequences of a consumer—
 - (i) bringing a subscription contract to an end at a time when the consumer has one or more rights to cancel the contract under this Chapter; 20
 - (ii) cancelling a subscription contract at a time when the consumer has more than one right to cancel the contract under this Chapter. 25
- (4) Provision under subsection (3)(e)(ii) must secure the result that, unless the consumer chooses otherwise, the consumer is to be taken to exercise the right to cancel under this Chapter that results in the most advantageous remedy to the consumer (and the regulations may include provision for determining what remedy is “most advantageous” to a consumer in different descriptions of case). 30
- (5) Before making regulations under subsection (1)(c), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) The following regulations under this section are subject to the affirmative procedure— 35
 - (a) the first regulations to be made under this section;
 - (b) any other regulations under this section that include provision within subsection (1)(c).
- (7) Regulations under this section to which subsection (6) does not apply are subject to the negative procedure. 40

Offence of failing to provide information about cooling-off rights

260 Offence of failing to provide pre-contract information about initial cooling-off rights

- (1) A trader commits an offence if the trader –
 - (a) enters into an off-premises subscription contract, and 5
 - (b) fails to –
 - (i) give the consumer the information listed in paragraph 10(a) of Schedule 20 in accordance with section 248(1)(a), or
 - (ii) give, or make available, the information set out in paragraph 20 of that Schedule in accordance with section 248(1)(b). 10
- (2) Subsections (3) and (4) apply where a trader –
 - (a) commits an offence under subsection (1), or
 - (b) would have committed an offence under that subsection but for a defence under section 261,
 and the commission of the offence, or of what would have been the offence, 15
 is due to the act or omission of another person (“P”).
- (3) P commits the offence (whether or not P is a trader).
- (4) P may be charged with and convicted of the offence by virtue of subsection (3) whether or not proceedings are taken against the trader.
- (5) In this section, an “off-premises subscription contract” means a subscription contract – 20
 - (a) entered into in person, in a place which is not the business premises of the trader,
 - (b) entered into by any means immediately after the consumer was individually and personally addressed by the trader in person in a place which is not the business premises of the trader, or 25
 - (c) entered into during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.
- (6) In subsection (5), “business premises”, in relation to a trader, means – 30
 - (a) any immovable retail premises where the activity of the trader is carried out on a permanent basis, or
 - (b) any movable retail premises where the activity of the trader is carried out on the usual basis.
- (7) In other provisions of this Chapter, references to an offence under subsection (1) include references to an offence under that subsection by virtue of subsection (3). 35

261 Defence of due diligence

- (1) It is a defence for a person (“the defendant”) charged with an offence under section 260(1) to prove –

- (a) that the commission of the offence was due to—
 - (i) the act or omission of another person, or
 - (ii) reliance on information given by another person, and
 - (b) that the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by the defendant or any other person under the defendant’s control. 5
- (2) A defendant is not entitled to rely on the defence provided by subsection (1) without the permission of the court unless—
 - (a) the defendant has served on the prosecutor a notice in writing giving such information as was then in the defendant’s possession identifying, or assisting in the identification of, the other person, and 10
 - (b) the notice is served on the prosecutor at least seven clear days before the hearing of the proceedings or, in Scotland, at least seven clear days before the trial diet.
- 262 Offences by officers of a body corporate etc 15**
 - (1) If an offence under section 260(1) committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the officer’s part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly. 20
 - (2) In subsection (1) a reference to an officer of a body corporate includes a reference to—
 - (a) a director, manager, secretary or other similar officer;
 - (b) a person purporting to act as a director, manager, secretary or other similar officer. 25
 - (3) Where an offence under section 260(1) committed by a Scottish partnership is proved—
 - (a) to have been committed with the consent or connivance of a partner, or 30
 - (b) to be attributable to any neglect on the part of a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
 - (4) In subsection (3), a reference to a partner includes a person purporting to act as a partner. 35
- 263 Penalty for offence and enforcement**
 - (1) A person who is guilty of an offence under section 260(1) is liable—
 - (a) on summary conviction in England Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale. 40

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- (2) It is the duty of every local weights and measures authority in Great Britain to enforce section 260(1) in its area.
 - (3) It is the duty of the Department for the Economy in Northern Ireland to enforce section 260(1) in Northern Ireland.
 - (4) No proceedings for an offence under section 260(1) may be instituted in England and Wales except by or on behalf of a local weights and measures authority in Great Britain. 5
 - (5) Nothing in subsection (2) authorises any local weights and measures authority in Great Britain to bring proceedings in Scotland for an offence.

General and miscellaneous provision 10

264 Information and notices: timing and burden of proof

- (1) This section applies for the purposes of this Chapter.
- (2) Where a trader gives any information or notice under this Chapter by email, by a message sent online, or by any other means of electronic communication, the information or notice is to be treated as given by the trader, and as received by the consumer, at the time that the communication is sent to the consumer. 15
- (3) Subsection (2) applies even if the consumer does not receive the communication where the reason for that is beyond the control of the trader.
- (4) Subsection (5) applies for the purposes of determining whether a consumer has – 20
 - (a) given notice that the consumer is cancelling a subscription contract in exercise of a right conferred by this Chapter within the period of time specified for the consumer to exercise the right;
 - (b) given notice that the consumer is bringing a subscription contract to an end within a period of time, or before a date, specified or described in the contract as the period during which, or date before which, the consumer may exercise the right. 25
- (5) The consumer is to be treated as having given notice within the required period, or before the specified date, if the communication by which the notice is given is sent before the end of that period (and for this purpose it is immaterial whether or not the trader receives the notice). 30
- (6) The burden of proof lies with the trader in any dispute between the trader and a consumer as to whether information or a notice has been given by the trader to the consumer in accordance with this Chapter. 35
- (7) The burden of proof lies with the consumer in any dispute between the consumer and a trader as to –
 - (a) whether the consumer has notified the trader that the consumer is bringing to an end, or cancelling, a subscription contract;

(b) when the consumer gave such notice.

- (8) Any information that a trader gives to a consumer under this Chapter must be given in clear and plain language and
- (a) if given in writing, be in a legible form;
 - (b) if given orally, be audible and comprehensible.

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265 Terms of a subscription contract which are of no effect

- (1) Any term of a subscription contract that is in contravention of this Chapter is, to that extent, of no effect (including any term that seeks to exclude or restrict a trader's liability arising from the terms implied into the contract by section 254).
- (2) In cases to which this subsection applies, any term of a subscription contract which seeks to impose on a consumer liability for a renewal payment before the day on which the contract renews is, to that extent, of no effect.
- (3) Subsection (2) applies to cases of a description specified in regulations under section 269(1)(e) (and the regulations may include provision for determining when a contract renews in each description of case).

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266 Other remedies for breach by trader

- (1) Nothing in this Chapter is to be taken as limiting the taking of any other remedies available to a consumer for breach of any term (whether express, implied by section 254 or otherwise) of a subscription contract.
- (2) Those other remedies may be sought—
- (a) in addition to the rights conferred on the consumer by this Chapter (but not so as to recover twice for the same loss), or
 - (b) instead of the exercise of any of those rights by the consumer.
- (3) Those other remedies include any of the following—
- (a) claiming damages;
 - (b) seeking specific performance;
 - (c) seeking an order for specific implement;
 - (d) relying on the breach against a claim by the trader under the contract;
 - (e) for breach of a term, exercising a right to treat the contract at an end.

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267 Application of this Chapter

- (1) Subsection (2) applies if—
- (a) the law of a country or territory other than the United Kingdom or any part of the United Kingdom is chosen by the parties to be applicable to a subscription contract, but
 - (b) the contract has a close connection with the United Kingdom.
- (2) This Chapter applies in relation to the contract despite that choice.

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- (3) This Chapter does not apply in relation to subscription contracts entered into before section 246 comes into force.

268 Crown application

- (1) Subject to subsection (2), this Chapter binds the Crown.
- (2) The Crown is not criminally liable as a result of anything in this Chapter. 5
- (3) Subsection (2) does not affect the application of any provision of this Chapter in relation to persons in the public service of the Crown.

269 Power to make further provision in connection with this Chapter

- (1) The Secretary of State may by regulations make provision—
- (a) about how and when information or a notice that a trader is required to give to a consumer under this Chapter may or must be given; 10
- (b) about the information that is to be contained in a notice given under this Chapter;
- (c) about the arrangements that a trader must make under section 252 to enable a consumer to exercise a right to bring a subscription contract to an end, and about when a consumer may exercise such a right; 15
- (d) specifying the period of time within which the refund of an overpayment must be made under section 253(2)(b);
- (e) specifying descriptions of cases for the purposes of section 265(2) (and about the day on which a contract renews for those purposes). 20
- (2) Regulations under subsection (1)(c) may include (among other things) provision restricting the period of notice that a trader may require a consumer to give to bring a subscription contract to an end.
- (3) Regulations under this section are subject to the negative procedure.

Consequential and other minor amendments 25

270 Amendment of the Consumer Rights Act 2015

- (1) CRA 2015 is amended as follows.
- (2) In section 11 (goods to be as described)—
- (a) in subsection (4), after “(SI 2013/3134)” insert “, or in paragraph 13 of Schedule 20 to the Digital Markets, Competition and Consumers Act 2023,”; and 30
- (b) in subsection (5), after “effective” insert “as a variation of a term implied by subsection (4)”.
- (3) In section 12 (other pre-contract information included in contract)—

- (a) after subsection (2) insert—
 - “(2A) Where section 248(1) of the Digital Markets, Competition and Consumers Act 2023 (pre-contract information) required the trader to give information, or make information available, to the consumer, any of that information that was provided by the trader other than information about goods mentioned in paragraph 13 of Schedule 20 to that Act is to be treated as included as a term of the contract.”, and 5
- (b) in subsection (3)—
 - (i) for “that information” substitute “the information that is to be treated as a term of a contract under subsection (2) or (2A)”, and 10
 - (ii) after “effective” insert “as a variation of a term implied by subsection (2) or (2A)”. 10
- (4) In section 36 (digital content to be as described)— 15
 - (a) in subsection (3), after “(SI 2013/3134)” insert “, or in paragraph 13 or 26 of Schedule 20 to the Digital Markets, Competition and Consumers Act 2023,”, and
 - (b) in subsection (4), after “effective” insert “as a variation of a term implied by subsection (3)”. 20
- (5) In section 37 (other pre-contract information included in contract)—
 - (a) after subsection (2) insert—
 - “(2A) Where section 248(1) of the Digital Markets, Competition and Consumers Act 2023 (pre-contract information) required the trader to give information, or make information available, to the consumer, any of that information that was provided by the trader other than information about digital content mentioned in paragraph 13 or 26 of Schedule 20 to that Act is to be treated as included as a term of the contract.”; 25
 - (b) in subsection (3)— 30
 - (i) for “that information” substitute “the information that is to be treated as a term of a contract under subsection (2) or (2A)”, and
 - (ii) after “effective” insert “as a variation of a term implied by subsection (2) or (2A)”. 35
- (6) In section 50 (information about the trader or service to be binding)—
 - (a) in subsection (3), after “(SI 2013/3134)” insert “, or in accordance with section 248(1) of the Digital Markets, Competition and Consumers Act 2023,”, and
 - (b) in subsection (4), after “effective” insert “as a variation of a term implied by subsection (3)”. 40

- (7) In paragraph 10 of Schedule 5 to CRA 2015 (investigatory powers: enforcer’s legislation), at the appropriate place insert –
- “Section 263(2) and (3) of the Digital Markets, Competition and Consumers Act 2023;”.

271 Other consequential amendments 5

- (1) In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008, at the appropriate place insert –
- “Digital Markets, Competition and Consumers Act 2023, Chapter 2 of Part 4.”.
- (2) The Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 (S.I. 2013/3134) is amended as follows. 10
- (3) In regulation 5 (other definitions), in the appropriate place insert –
- ““subscription contract” has the meaning it has in Chapter 2 of Part 4 of the Digital Markets, Competition and Consumers Act 2023 (see section 246 of that Act);”.
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- (4) After regulation 7(4) (application of Part 2) insert –
- “(4A) This Part does not apply to a subscription contract entered into after section 248 of the Digital Markets, Competition and Consumers Act 2023 comes into force.”.
- (5) After regulation 27(3) (application of Part 3) insert – 20
- “(3A) This Part does not apply to a subscription contract entered into after section 256 of the Digital Markets, Competition and Consumers Act 2023 comes into force.”.

General interpretation

272 Interpretation 25

- (1) In this Chapter –
- “business” includes –
- (a) a profession,
 - (b) a trade, craft or undertaking carried on for gain or reward, and
 - (c) the activities of any government department or local or public authority;
- “consumer” means an individual acting for purposes that are wholly or mainly outside the individual’s business;
- “durable medium” means paper, email or any other medium that –
- (a) allows pre-contract information to be addressed personally to the consumer,
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- (b) enables the consumer to store pre-contract information in a way accessible for future reference for a period that is long enough for the purposes of the information, and
 - (c) allows the unchanged reproduction of pre-contract information stored; 5
- “goods” includes –
 - (a) immoveable property;
 - (b) rights and obligations;
 - (c) water, gas and electricity if they are put up for sale in a limited volume or set quantity; 10
- “trader” means a person (“P”) acting for purposes relating to P’s business, whether acting personally or through another person acting in P’s name or on P’s behalf;
- “working day” means any day which is not –
 - (a) a Saturday or a Sunday, or 15
 - (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.
- (2) In this Chapter –
 - (a) references to a contract for the supply of goods, services or digital content include references to a contract for the supply of any combination of goods, services and digital content; 20
 - (b) references to payment or to a consumer being charged are references to payment, or a consumer being charged, in money or money’s worth;
 - (c) references to something happening automatically under a subscription contract are references to it happening without any action on the part of the consumer to cause it to happen (ignoring the consumer’s action of entering into the contract or any action taken in connection with, or for the purpose of, entering into it); 25
 - (d) references to something recurring are references to it happening more than once; 30
 - (e) references to a supply of goods, services or digital content for a fixed term include references to a supply of goods, services or digital content which is fixed to any extent;
 - (f) references to a consumer entering into a subscription contract include references to a consumer placing an order for the supply of goods, services or digital content under a subscription contract in circumstances where –
 - (i) the trader is (in any way) inviting such orders, and
 - (ii) the consumer is not required to take any further action for the contract to be concluded. 40

273 Index of defined expressions

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

Expression		5
Business	Section 272(1)	
Consumer	Section 272(1)	
Cooling-off notice	Section 258(1)	
Digital content	Section 272(1)	
Durable medium	Section 272(1)	10
Excluded contract	Section 247	
Full pre-contract information	Section 248(1)(b)	
Goods	Section 272(1)	
Initial cooling-off period	Section 257(1)	
Key pre-contract information	Section 248(1)(a)	15
Reminder notice	Section 250(1)	
Renewal cooling-off period	Section 257(2)	
Renewal payment	Section 250(4)	
Subscription contract	Section 246	
Trader	Section 272(1)	20
Working day	Section 272(1)	

CHAPTER 3

CONSUMER SAVINGS SCHEMES

274 Meaning of “consumer savings scheme contract”

- (1) For the purposes of this Chapter, a consumer savings scheme contract is a contract—
- (a) under which—
 - (i) a consumer makes payments to a trader,
 - (ii) the trader credits those payments to an account that is held by the trader for the consumer (“the consumer’s account”), and
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- (iii) the payments credited to the consumer’s account provide a fund for the consumer to redeem as goods, services or digital content in accordance with the terms of the contract,
 - (b) to which one or more of subsections (2), (3) or (4) applies, and
 - (c) which is not an excluded arrangement (see section 276). 5
- (2) This subsection applies to a contract if it contains terms which have the effect of restricting the times at, or periods of time during, which the consumer may redeem funds from the consumer’s account.
- (3) This subsection applies to a contract if it contains terms which have the effect of incentivising the consumer to redeem, or refrain from redeeming, funds in the consumer’s account at a time, or during a period of time, specified in the terms of the contract. 10
- (4) This subsection applies to a contract if it is marketed or advertised in such a way as to encourage the consumer to redeem, or refrain from redeeming, funds in the consumer’s account at a time, or during a period of time, specified in material used for the purposes of marketing or advertising the contract. 15

275 Other defined terms

- (1) In this Chapter, references to a trader operating a consumer savings scheme are references to a trader entering into a consumer savings scheme contract.
- (2) For the purposes of section 274(1)(a)(ii), it is sufficient for a trader to hold the consumer’s payments in some way other than crediting those payments to a specific account for that consumer and references in this Chapter to a “consumer’s account” are to be construed accordingly. 20
- (3) In this Chapter, “protected payments” are payments, made by a consumer under a consumer savings scheme contract, in respect of which funds in the consumer’s account have not been redeemed. 25
- (4) Subject to subsection (5), in this Chapter, funds are treated as redeemed when the trader provides the consumer with goods, services or digital content in accordance with the terms of the consumer savings scheme contract.
- (5) Where a trader provides a consumer with vouchers or credit-tokens which may be redeemed only in respect of goods, services or digital content provided by that trader, funds are treated as redeemed for the purposes of this Chapter only when those vouchers or credit-tokens are redeemed. 30

276 Excluded arrangements

- (1) An arrangement is an excluded arrangement for the purposes of this Chapter if it is of a description set out in Schedule 21. 35
- (2) The Secretary of State may by regulations amend Schedule 21 so as to –
 - (a) add a description of an arrangement to the Schedule;
 - (b) remove a description of an arrangement from the Schedule;

- (c) modify a description of an arrangement set out in the Schedule.
- (3) The power under subsection (2)(a) and (c) includes power to provide for an arrangement to be an excluded arrangement—
 - (a) generally for the purposes of this Chapter;
 - (b) only for such purposes of this Chapter as are specified. 5
- (4) Regulations under subsection (2) are subject to the affirmative procedure.

277 Insolvency protection requirement

- (1) A trader operating a consumer savings scheme must make and maintain the arrangements set out in section 278 (insurance arrangements) or in section 279 (trust arrangements) to cover, in the event of the trader’s insolvency, the cost of returning to the consumer any protected payments at the time of the insolvency. 10
- (2) It is an implied term of every consumer savings scheme contract that the trader complies with the requirements of this section.
- (3) A trader operating a consumer savings scheme in the United Kingdom, who is not established in the United Kingdom, must comply with the requirements of this section. 15
- (4) References in this Chapter to a trader’s insolvency are references to a trader being subject to—
 - (a) administration within the meaning of the Insolvency Act 1986, 20
 - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (c) proceedings under the insolvency law of a country or territory outside the United Kingdom during which an entity’s assets and affairs are subject to the control or supervision of a third party or creditor. 25

278 Insurance arrangements

- (1) Where a trader relies on arrangements under this section for the purpose of satisfying section 277, the trader must maintain insurance under one or more appropriate policies with an insurer authorised in respect of such business in the United Kingdom, the Channel Islands or the Isle of Man. 30
- (2) In this section “appropriate policy” means a policy—
 - (a) under which the insurer agrees to indemnify consumers in the event of the insolvency of the trader;
 - (b) under which consumers are insured persons in respect of the costs referred to in paragraph (d); 35
 - (c) which does not contain a condition which provides (in whatever terms) that no liability arises, or that any liability arising ceases—
 - (i) in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy; 40

- (ii) in the event of the policy holder not making payments under or in connection with other policies; or
 - (iii) unless the policy holder keeps specified records or makes available to, or provides the insurer with, information from those records; and 5
 - (d) which covers the costs of returning to the consumer any protected payments at the time of the insolvency.
- (3) The trader must meet the costs of arranging and maintaining an appropriate policy and any related charges or taxes, without recourse to the consumer payments which are to be protected under that policy. 10

279 Trust arrangements

- (1) Where a trader relies on arrangements under this section for the purpose of satisfying section 277, the trader must ensure that all payments made by a consumer under a consumer savings scheme contract are held on trust for the consumer, in the United Kingdom, by one or more persons appointed as trustees for the consumer. 15
- (2) Subject to subsection (3), the monies are to be held on trust for the consumer as required by subsection (1) until—
- (a) the funds in the consumer’s account have been redeemed, or
 - (b) any payments made by the consumer in respect of the consumer savings scheme contract have been returned to the consumer. 20
- (3) The trustees may authorise the use of monies held on trust for the consumer as required by subsection (1)—
- (a) to pay suppliers for goods, services or digital content to be provided to the consumer in accordance with the terms of the consumer savings scheme contract, 25
 - (b) to return payments to the consumer in exceptional circumstances, or
 - (c) to pay any profits after the consumer has redeemed all of the funds in their account.
- (4) For the purposes of subsection (3)(a), trustees may only authorise the release of monies on receipt of a declaration by the trader that the trader is solvent. 30
- (5) The trustee, or where there is more than one trustee, the majority of persons appointed as trustees for the purpose of subsection (1), must be independent of the trader.
- (6) For the purpose of subsection (5), a person is independent of the trader in relation to a trust only if— 35
- (a) the person has no interest in the assets of the trader or of the trust otherwise than as a trustee of that trust, or
 - (b) the person is neither connected with, nor an associate of— 40
 - (i) the trader, or

- (ii) any person for the time being acting as an insolvency practitioner in relation to the trader.
- (7) The cost of administering the trust must be paid for by the trader.
- (8) The trader must arrange for an independent auditor to be appointed to audit the accounts of the trust every three years. 5
- (9) In the event of a trader’s insolvency, monies held on trust for a consumer by the trustees in accordance with this section must be returned to the consumer.

280 Information requirements

- (1) A trader must, before the end of 30 working days beginning with the day on which a consumer makes the first payment to the trader under a consumer savings scheme contract, provide to the consumer the following information – 10
 - (a) the name, address, telephone number and email address of the insurer or trustees responsible for protecting the consumer’s payments;
 - (b) where insurance arrangements are in place, the policy number for the policy under which the consumer’s payments are protected; 15
 - (c) where trust arrangements are in place, a copy of the trust deed under which the consumer’s payments are held.
- (2) The trader must notify the consumer of any change to any of the information provided under subsection (1) before the end of 30 working days, beginning with the day on which the change takes effect. 20
- (3) Where a consumer makes a written request to the trader for the information mentioned in subsection (1), the trader must, before the end of 30 working days beginning with the day on which the request is received, provide, without charge, the information requested.
- (4) The information provided under this section must be in clear and plain language and, if in writing, in a legible form. 25
- (5) The information provided under this section must –
 - (a) in cases where the contract is to be entered into in the simultaneous physical presence of the trader and the consumer, be given in writing on a durable medium; 30
 - (b) in cases where the contract is to be entered into online without the simultaneous physical presence of the trader and the consumer –
 - (i) be given in writing by being displayed in any location online where the consumer may take steps to enter into the contract, and 35
 - (ii) be accessible in that location without the need for any action by the consumer;
 - (c) in cases where the contract is to be entered into orally without the simultaneous physical presence of the trader and the consumer, be given to the consumer orally and in a way that is audible and comprehensible. 40

- (6) In cases not falling within subsection (5)(a) the trader must also, as soon as reasonably practicable after the contract has been entered into, give the consumer the information in writing on a durable medium.
- (7) A trader operating a consumer savings scheme in the United Kingdom, who is not established in the United Kingdom, must comply with the requirements of this section. 5
- (8) It is an implied term of every consumer savings scheme contract that the trader complies with the requirements of this section.
- (9) The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (S.I. 3134/2013) apply to consumer savings scheme contracts to the extent that requirements under those regulations are not met by compliance with this section. 10

281 Exercise of functions relating to this Chapter

In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008, at the appropriate place insert— 15

“Digital Markets, Competition and Consumers Act 2023, Chapter 3 of Part 4”.

282 Interpretation

In this Chapter—

“business” includes— 20

- (a) a trade, craft or profession;
- (b) any other undertaking carried on for gain or reward or in the course of which goods, services or digital content are supplied otherwise than free of charge;

but does not include the activities of any government department or local or public authority; 25

“consumer” means an individual acting for purposes that are wholly or mainly outside the individual’s business;

“durable medium” means, in relation to the provision of information, paper, email or any other medium that— 30

- (a) allows the information to be addressed personally to the consumer,
- (b) enables the consumer to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and 35
- (c) allows the unchanged reproduction of the information stored;

“excluded arrangement” is to be read in accordance with section 276;

“goods” includes vouchers, rights and obligations but does not include buildings or other structures or immovable property;

“trader” means a person (“P”) acting for purposes relating to P’s business whether acting personally or through another person acting in P’s name or on P’s behalf;

“turnover” has the same meaning as in section 196 (determination of turnover) and references to “this Part” in section 196 are to be read, for the purposes of this Chapter, as references to this Chapter;

“working day” means any day which is not –

- (a) a Saturday or a Sunday, or
- (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

CHAPTER 4

ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER CONTRACT DISPUTES

Interpretation of Chapter 4

283 Meaning of “ADR” and related terms

- (1) This section has effect for the purposes of this Chapter. 15
- (2) “ADR” means any method of securing or facilitating an out-of-court resolution of a consumer contract dispute that is carried out by an independent third party acting in relation to both parties to the dispute.
- (3) But the term “ADR” does not include anything carried out by a person in their capacity as – 20
 - (a) a judge, or
 - (b) a member of the staff of a court or tribunal.
- (4) The following are examples of ADR (if carried out as mentioned in subsection (2) in relation to a consumer contract dispute) – 25
 - (a) mediation;
 - (b) arbitration;
 - (c) early neutral evaluation;
 - (d) action under an ombudsman scheme.
- (5) In subsection (2) “resolution” includes – 30
 - (a) a decision binding both parties;
 - (b) a decision which, if accepted by the consumer, binds the trader;
 - (c) settlement of the dispute between the parties.
- (6) “ADR provider” means a person who does either or both of the following – 35
 - (a) carrying out ADR in relation to a consumer contract dispute, or
 - (b) making special ADR arrangements.
- (7) “Special ADR arrangements” are (subject to subsection (8)) arrangements made by an ADR provider with another person (whether or not that other

- person is an exempt or accredited ADR provider) for ADR to be carried out by that other person in relation to one or more consumer contract disputes.
- (8) Arrangements made by a person acting for only one of the parties to a consumer contract dispute are not special ADR arrangements.
- (9) “Exempt ADR provider” means a person who is for the time being exempt from either or both of the prohibitions in section 285(1) and (2) (whether or not their exemption is limited as mentioned in section 287(3)). 5
- (10) “Accredited ADR provider” means a person who is for the time being accredited under this Chapter (whether or not their accreditation is limited to particular descriptions of ADR or special ADR arrangements). 10
- (11) In this section “judge” includes –
- (a) a member of a tribunal,
 - (b) a justice of the peace or, in Northern Ireland, a lay magistrate,
 - (c) a clerk or other officer entitled to exercise the jurisdiction of a court or tribunal, and 15
 - (d) a holder of any other public office with functions of a judicial nature.

284 Other definitions

- (1) This section has effect for the purposes of this Chapter.
- (2) “Consumer contract” means (subject to the following provisions of this section) a contract between a trader and a consumer which is – 20
- (a) a contract to which Chapter 2 of Part 1 of CRA 2015 (contracts to supply goods) applies;
 - (b) a contract to which Chapter 3 of that Part (contracts to supply digital content) applies;
 - (c) a contract to which Chapter 4 of that Part (contracts to supply services) applies; 25
 - (d) a mixed contract, that is to say a contract to which any two or three of those Chapters apply (see section 1(3) and (4) of that Act).
- (3) The reference in subsection (1)(a) to a contract to which Chapter 2 of Part 1 of CRA 2015 applies includes a reference to – 30
- (a) a contract between a gas supplier and a consumer for the supply of gas to any premises;
 - (b) a contract deemed by paragraph 8(1) or (2) of Schedule 2B to the Gas Act 1986 (the gas code) to exist between a gas supplier and a consumer for the supply of gas to any premises; 35
 - (c) a contract between an electricity supplier and a consumer for the supply of electricity to any premises;
 - (d) a contract deemed to exist by paragraph 3(1) or (2) of Schedule 6 to the Electricity Act 1989 (the electricity code);
 - (e) the terms applying as between a water supplier and a consumer in respect of the supply of water to any premises by a water supplier. 40

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- (4) In subsection (3)–
- “electricity supplier” means a person who is authorised to supply electricity by a licence or exemption under Part 1 of the Electricity Act 1989;
 - “gas supplier” means a person who is authorised to supply gas by a licence or exemption under Part 1 of the Gas Act 1986; 5
 - “water supplier” means a water undertaker or a water supply licensee within the meaning of the Water Industry Act 1991.
- (5) The reference in subsection (2)(c) to a contract to which Chapter 4 of CRA 2015 applies includes a contract between a heat supplier and a consumer for the supply of heating, cooling or hot water by means of thermal energy provided from a heat network. 10
- (6) In subsection (5)–
- “heat network” has the meaning given by section 167 of the Energy Act 2023, and 15
 - “heat supplier” means a person who charges for making a supply of heating, cooling or hot water by means of thermal energy provided from a heat network.
- (7) In the application of provisions of Part 1 of CRA 2015 for determining whether a contract is a consumer contract for the purposes of this Chapter, the following provisions are to be disregarded – 20
- (a) section 32(2) (provisions excluded from the operation of section 32(1));
 - (b) section 48(5) (power to exclude services from scope of Chapter 4 of Part 1).
- (8) The Secretary of State may by regulations provide that contracts of a description specified in the regulations are excluded from being consumer contracts for the purposes of this Chapter. 25
- (9) The power in subsection (8) includes power to provide that the exclusion only applies in circumstances specified in the regulations.
- (10) Regulations under subsection (8) are subject to the affirmative procedure. 30
- (11) “Consumer contract dispute” means a dispute between the parties to a consumer contract which relates to the contract, including a dispute concerning – 35
- (a) anything done by either party before making the contract,
 - (b) the making of the contract,
 - (c) obligations under or relating to the contract, or
 - (d) the performance by either party of their obligations under or relating to the contract.
- (12) In subsection (3) “dispute” means a legal dispute, that is to say one which may be determined by a court or tribunal in proceedings brought by either of the parties to the contract. 40

(13) The “parties” to a consumer contract, or a consumer contract dispute, are the consumer and the trader.

(14) The following terms have the meaning given by section 2 of CRA 2015—

“business”

“consumer”

“goods”

“trader”.

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But in interpreting the term “consumer” section 2(4) to (6) of that Act is to be disregarded.

Prohibition on acting as ADR provider without accreditation etc

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285 Prohibitions relating to acting as ADR provider

(1) A person must not carry out ADR in relation to a consumer contract dispute unless the person—

(a) is an exempt ADR provider whose exemption covers the ADR being carried out,

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(b) is an accredited ADR provider whose accreditation covers the ADR being carried out, or

(c) is acting under special ADR arrangements made by

(i) an exempt ADR provider whose exemption covers the making of those special ADR arrangements, or

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(ii) an accredited ADR provider whose accreditation covers the making of those special ADR arrangements.

(2) A person must not make special ADR arrangements in relation to any one or more consumer contract disputes unless the person is—

(a) an exempt ADR provider whose exemption covers the making of those special ADR arrangements, or

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(b) an accredited ADR provider whose accreditation covers the making of those special ADR arrangements.

286 Prohibitions relating to charging fees to consumers

(1) An accredited ADR provider must not charge the consumer a fee in respect of ADR being carried out (or to be carried out) in relation to a consumer contract—

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(a) by the accredited ADR provider, or

(b) by another ADR provider under special ADR arrangements made by the accredited ADR provider,

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unless the fee is charged in accordance with provisions for the charging of fees to consumers which meet the conditions in subsection (2).

(2) The conditions are that the provisions in question—

(a) have been made by the ADR provider,

- (b) are approved by the Secretary of State for the purposes of this subsection, and
 - (c) are published in a manner likely to come to the attention of consumers whose consumer contract disputes may be dealt with by the ADR provider. 5
- (3) An ADR provider who carries out (or is to carry out) ADR in relation to a consumer contract dispute under special ADR arrangements must not charge the consumer any fee in respect of carrying out the ADR in question.

Exempt ADR providers

287 Exempt ADR providers

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- (1) In Schedule 22 –
 - (a) Part 1 sets out the persons who are exempt ADR providers, and
 - (b) Part 2 contains supplementary provision.
- (2) The Secretary of State may by regulations amend Schedule 22 for the purpose of – 15
 - (a) adding a new entry in Part 1;
 - (b) varying or removing an entry for the time being included in Part 1;
 - (c) varying the supplementary provision in Part 2.
- (3) Regulations under subsection (2) may, in particular –
 - (a) provide for an entry in Part 1 to apply to persons of a specified description; 20
 - (b) limit the exemption given to a person (or to persons of a specified description) from the prohibition in section 285(1) to carrying out ADR of such a description as may be specified;
 - (c) limit the exemption given to a person (or to persons of a specified description) from the prohibition in section 285(2) to making special ADR arrangements of a specified description. 25
- (4) For the purposes of subsection (3) –
 - (a) descriptions of ADR may be framed by reference to kinds of ADR or types of dispute (or both), and 30
 - (b) descriptions of special ADR arrangements may be framed by reference to any features of such arrangements, including in particular the kinds of ADR involved or the types of dispute involved (or both).
- (5) Subject to any limitation under subsection (3) an exemption conferred on a person by virtue of an entry in Schedule 22 covers anything done by the person that would otherwise be prohibited by section 285(1) or (2). 35
- (6) In this section “specified” means specified in the regulations.
- (7) Regulations under subsection (2) are subject to the negative procedure.

- (8) For the purposes of this Chapter (and in particular the definition of “ADR provider” in section 283(6)) any person referred to in an entry in Part 1 of Schedule 22 who does not carry out ADR itself is to be regarded as the ADR provider who made the scheme or other arrangements referred to in that entry.

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Accreditation: procedure etc

288 Applications for accreditation etc

- (1) A person who wishes to be an accredited ADR provider must apply to the Secretary of State for accreditation to enable the person to carry out ADR or to make special ADR arrangements (or to do both). 10
- (2) An application for accreditation to carry out ADR may be limited to one or more particular descriptions of ADR.
- (3) An application for accreditation to make special ADR arrangements may be limited to one or more particular descriptions of special ADR arrangements.
- (4) The Secretary of State may determine the procedure to be followed in relation to an application for accreditation. 15
- (5) The matters which may be determined under subsection (4) include (among other things)–
- (a) the form in which applications are to be made;
 - (b) the particular descriptions of ADR for which limited accreditation may be applied for and granted; 20
 - (c) the particular descriptions of special ADR arrangements for which limited accreditation may be applied for and granted;
 - (d) the information to be given by applicants;
 - (e) any fee payable to the Secretary of State. 25
- (6) Section 287(4) applies for the purposes of subsection (5) as it applies for the purposes of section 287(3).
- (7) Any fees payable by applicants may be set having regard to the costs to the Secretary of State of processing and determining applications for accreditation.
- (8) The Secretary of State must publish anything determined under subsection (4) in a manner likely to come to the attention of potential applicants for accreditation. 30
- (9) The powers of the Secretary of State under subsection (4) may be exercised differently for different purposes.
- (10) An accredited ADR provider whose accreditation is limited may apply to the Secretary of State for their accreditation to be extended by the removal or variation of any limitation. 35

289 Determination of applications for accreditation or extension of accreditation

- (1) This section applies where an application for accreditation, or for extension of an accreditation, has been made to the Secretary of State (and has not been withdrawn).
- (2) In the case of an application for accreditation, the Secretary of State must, as soon as is reasonably practicable –
 - (a) consider the application,
 - (b) decide whether –
 - (i) to grant the accreditation applied for,
 - (ii) to grant a more limited accreditation, or
 - (iii) to refuse the application, and
 - (c) give notice in writing to the applicant of the decision and, in the case of a decision mentioned in paragraph (b)(ii) or (iii), the reasons for the decision.
- (3) Accreditation granted under subsection (2)(b)(ii) may be limited to such descriptions of ADR or such descriptions of special ADR arrangements (or both) as the Secretary of State considers appropriate and specifies in the accreditation.
- (4) If accreditation is granted, the Secretary of State may also decide to impose conditions on the accreditation.
- (5) The Secretary of State may only grant accreditation if satisfied that the accreditation criteria will be met by or in relation to the applicant after accreditation is granted.
- (6) An accreditation is not time limited unless –
 - (a) the Secretary of State determines that it is to have effect for a limited period, and
 - (b) the notice of the decision on the application states that the accreditation is time limited and specifies the period for which it has effect.
- (7) The notice of a decision to grant accreditation must specify the day on which the accreditation takes effect.
- (8) In the case of an application for extension of an accreditation, the Secretary of State must, as soon as is reasonably practicable –
 - (a) consider the application,
 - (b) decide whether –
 - (i) to grant the application,
 - (ii) to extend the accreditation, but to a more limited extent than applied for, or
 - (iii) to refuse the application, and
 - (c) give notice in writing to the applicant of the decision and, in the case of a decision mentioned in paragraph (b)(ii) or (iii), the reasons for the decision.

- (9) If the applicant’s accreditation is extended, the Secretary of State may also decide—
- (a) to impose new conditions on the accreditation as extended, or
 - (b) to vary or remove any condition on the existing accreditation.
- (10) The Secretary of State may only extend an accreditation if satisfied that the accreditation criteria will be met by or in relation to the applicant after the accreditation is extended. 5
- (11) An extension of an accreditation is not time limited unless the Secretary of State determines that the extension is to have effect for a limited period and the notice of the decision on the application for extension— 10
- (a) states that the extension is time limited (unless made permanent following a subsequent application by the ADR provider),
 - (b) specifies the period for which the extension has effect, and
 - (c) makes provision for the accreditation to revert to its state before the extension, in the event that the extension lapses at the end of that period. 15
- (12) The notice of a decision to extend an accreditation must specify the day on which the extension takes effect.
- (13) Where the Secretary of State decides— 20
- (a) to impose conditions under subsection (4), or
 - (b) to impose new conditions, or to remove or vary any condition on the existing accreditation, under subsection (9),
- the notice of the decision on the relevant application must set out the conditions on the accreditation or the accreditation as extended, and give the Secretary of State’s reasons for the decisions made under subsection (4) or (9) (as the case may be). 25

290 Revocation or suspension of accreditations etc

- (1) This section confers powers on the Secretary of State in relation to the accreditation of an accredited ADR provider.
- (2) The Secretary of State may, by notice to the ADR provider, revoke the accreditation on the application of the ADR provider. 30
- (3) Subsection (4) applies in relation to the ADR provider where the Secretary of State considers that any one or more of the following conditions are met—
- (a) the ADR provider is contravening, or has contravened, any of the prohibitions in section 285 and 286; 35
 - (b) the ADR provider is failing, or has failed, to comply with any of the accreditation criteria;
 - (c) the ADR provider is failing, or has failed, to comply with any conditions on its accreditation;
 - (d) the ADR provider is failing, or has failed, to comply with an enforcement notice under section 293. 40

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- (4) The Secretary of State may by notice to the ADR provider—
- (a) alter the accreditation, by doing either or both of the following—
 - (i) limiting the accreditation to such descriptions of ADR or such descriptions of special ADR arrangements (or both) as the Secretary of State considers appropriate, and 5
 - (ii) imposing new conditions on the accreditation,
 - (b) suspend the accreditation, or
 - (c) revoke the accreditation.
- (5) Before giving such a notice the Secretary of State must give the ADR provider a reasonable opportunity to make representations as to— 10
- (a) whether one or more of the conditions mentioned in subsection (3) are met in relation to the ADR provider, and
 - (b) if so, what action (if any) it is appropriate for the Secretary of State to take under subsection (4).
- (6) Any new conditions on the accreditation must be conditions the Secretary of State considers necessary to secure compliance with the prohibitions in sections 285 and 286, the accreditation criteria, the existing conditions on the accreditation or the enforcement notice (as the case may be). 15
- (7) Where new conditions on the accreditation are imposed, the Secretary of State must— 20
- (a) keep those conditions under review, and
 - (b) by notice to the ADR provider revoke any of those conditions that the Secretary of State considers is no longer necessary for the purpose set out in subsection (6).
- (8) A notice that the accreditation is being altered must specify the day on which the alterations take effect. 25
- (9) A notice that the accreditation is suspended or revoked must specify the day on which the accreditation ceases to be in force.
- (10) Where the accreditation is suspended the notice must also set out when or in what circumstances the suspension is to cease to have effect so that the accreditation is again in force. 30
- (11) The provision required by subsection (10) may consist of any one or more of the following—
- (a) provision for the suspension to cease to have effect at the end of a period specified in the notice, 35
 - (b) provision for it to cease to have effect on the satisfaction of conditions specified in the notice, and
 - (c) provision for it to cease to have effect when a decision to lift it is made by the Secretary of State and notified to the ADR provider.

291 Fees payable by accredited ADR providers

- (1) Accredited ADR providers must pay to the Secretary of State, at such times as the Secretary of State may determine, such fees as may be so determined.
- (2) Fees payable by accredited ADR providers may be set having regard to the costs to the Secretary of State of carrying out functions under this Chapter (other than functions relating to processing and determining applications for accreditation). 5
- (3) The Secretary of State must publish anything determined under subsection (1) in a manner likely to come to the attention of potential applicants for accreditation. 10
- (4) The powers of the Secretary of State under subsection (1) may be exercised differently for different purposes.

292 Accreditation criteria

- (1) For the purposes of this Chapter the accreditation criteria are the criteria set out in Schedule 23. 15
- (2) The Secretary of State may by regulations amend Schedule 23 for the purpose of –
 - (a) adding a new criterion, or
 - (b) removing or varying any criterion for the time being set out in that Schedule. 20
- (3) Regulations under subsection (2) are subject to the affirmative procedure.

Enforcement of prohibitions etc

293 Enforcement notices

- (1) The Secretary of State may give an enforcement notice to an ADR provider if satisfied that the provider is contravening, or has contravened, any one or more of the following –
 - (a) the prohibition in section 285(1) or (2);
 - (b) the prohibition in section 286(1) or (3);
 - (c) a condition on its accreditation;
 - (d) the duty to pay a fee due under section 291(1); 30
 - (e) a duty imposed by regulations under section 294;
 - (f) a duty imposed by a direction under section 295.
- (2) Before reaching a final view as to whether or not to give an enforcement notice to an ADR provider, the Secretary of State must give the provider a reasonable opportunity to make representations as to –
 - (a) whether the condition in subsection (1) is met, and
 - (b) if so, whether an enforcement notice should be given to it. 35

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- (3) An enforcement notice is a notice requiring the ADR provider in question to do, or not to do, such things as are specified in the notice or are of a description so specified, with a view to securing compliance with the prohibition, condition or duty in question.
- (4) An enforcement notice may – 5
- (a) include requirements for the ADR provider to give information to the Secretary of State, or
 - (b) include other supplementary, incidental or consequential provision.
- (5) The notice must make clear, in particular – 10
- (a) what requirements are being imposed by the notice, and
 - (b) when they are to be complied with (whether immediately or otherwise).
- (6) The Secretary of State may, by notice to the ADR provider to whom an enforcement notice has been given – 15
- (a) revoke the enforcement notice, or
 - (b) revoke any requirement contained in the notice and, if necessary, make any consequential changes to the other provisions of the notice.
- (7) The power under subsection (6) may be exercised on the application of the ADR provider or otherwise.
- (8) An enforcement notice may, with the permission of the High Court or the Court of Session, be enforced as if it were an order made by that court. 20
- (9) The Secretary of State may publish information about enforcement notices given under this section.

Provision of Information etc

294 ADR information regulations

- (1) The Secretary of State may by regulations require persons of a specified description (being persons within subsection (2)) – 25
- (a) to provide ADR information to the Secretary of State;
 - (b) to provide ADR information to a person with functions conferred by regulations under section 298;
 - (c) to provide ADR information to consumers by publishing it. 30
- (2) Regulations under this section may impose requirements on – 35
- (a) accredited ADR providers,
 - (b) exempt ADR providers,
 - (c) persons (not being accredited or exempt ADR providers) who carry out ADR under special ADR arrangements,
 - (d) persons who have been, but are no longer, within paragraph (a), (b) or (c),
 - (e) regulators, but only in relation to relevant ADR information (see section 297(2)).

- (3) The power to impose requirements under subsection (1)(a) may only be exercised for the purpose of enabling or facilitating one or more of the following (whether done by the Secretary of State or by another person under arrangements made with the Secretary of State) –
 - (a) publication of ADR information provided to the Secretary of State for the benefit of consumers; 5
 - (b) monitoring or evaluation of the operation of the system of accreditation under this Chapter;
 - (c) monitoring or evaluation of the provision and quality of ADR carried out in the United Kingdom. 10
- (4) Regulations under this section may provide for –
 - (a) the ADR information to be provided or published;
 - (b) the manner in which it is to be provided or published;
 - (c) the intervals or times at which it is to be provided or published;
 - (d) time limits for providing or publishing it. 15
- (5) Regulations under this section are subject to the negative procedure.

295 ADR information directions

- (1) The Secretary of State may give a direction to any person falling within subsection (2) requiring the person to provide ADR information to the Secretary of State. 20
- (2) A direction may be given to –
 - (a) an accredited ADR provider,
 - (b) an exempt ADR provider,
 - (c) a person (not being an accredited or exempt ADR provider) who carries out ADR under special ADR arrangements, 25
 - (d) a person who has been an accredited or exempt ADR provider or a person mentioned in paragraph (c), or
 - (e) a regulator, but only in relation to relevant ADR information (see section 297(2)).
- (3) A direction may only be given – 30
 - (a) for the purpose of enabling or facilitating one or more of the following (whether done by the Secretary of State or by another person under arrangements made with the Secretary of State) –
 - (i) publication of ADR information for the benefit of consumers;
 - (ii) monitoring or evaluation of the operation of the system of accreditation under this Chapter; 35
 - (iii) monitoring or evaluation of the provision and quality of ADR carried out in the United Kingdom, or
 - (b) for any other purpose connected with the exercise of the Secretary of State’s functions under this Chapter. 40
- (4) A direction may provide for –

-
- (a) the ADR information to be provided;
 - (b) the manner in which it is to be provided;
 - (c) time limits for providing it.
- (5) A person to whom a direction is given must so far as reasonably practicable comply with it. 5
- (6) The duty to comply with a direction is enforceable by the Secretary of State in civil proceedings—
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or 10
 - (c) for any other appropriate remedy or relief.
- (7) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (within the meaning of the Data Protection Act 2018 - see section 3 of that Act). 15
In determining whether a disclosure would do that, the duty imposed by subsection (5) is to be taken into account.
- (8) In this section “direction” means a direction under this section.

296 Disclosure of ADR information by the Secretary of State

- (1) This section applies to any ADR information relating to ADR providers which— 20
- (a) is provided to the Secretary of State in response to regulations under section 294 or a direction under section 295, or
 - (b) is otherwise held by the Secretary of State for the purposes of any function of the Secretary of State under this Chapter.
- (2) The Secretary of State may publish information to which this section applies for the purpose of providing information to consumers. 25
- (3) The Secretary of State may disclose information to which this section applies—
- (a) to any Minister of the Crown, government department or devolved authority;
 - (b) to a regulator; 30
 - (c) to a public designated enforcer (see section 143);
 - (d) if the disclosure is necessary for the purpose of criminal proceedings.
- (4) This section does not permit a publication or disclosure of information that would contravene the data protection legislation (but in determining whether such would do so, the power conferred by this section is to be taken into account). 35
- (5) This section does not affect any power to disclose information apart from this section.

- (6) In this section “devolved authority” means the Welsh Ministers, the Scottish Ministers or a Northern Ireland Department.

297 Meaning of “ADR information” and other terms in sections 294 to 296

- (1) In sections 294 to 296 “ADR information” means any information about or relating to— 5
- (a) an ADR provider,
 - (b) ADR carried out by an ADR provider,
 - (c) special ADR arrangements made by an ADR provider.
- (2) In those sections “relevant ADR information”, in relation to requirements imposed on a regulator, means any information about or relating to— 10
- (a) ADR carried out by a relevant ADR provider,
 - (b) special ADR arrangements made by a relevant ADR provider,
 - (c) ADR carried out by ADR providers acting under special ADR arrangements made by a relevant ADR provider, or
 - (d) anything done by the regulator which directly or indirectly affects a relevant ADR provider so far as relating to anything falling within paragraphs (a) to (c). 15
- (3) In subsection (2) “relevant ADR provider”, in relation to a regulator, means an accredited or exempt ADR provider—
- (a) who is subject to regulation by the regulator, or
 - (b) whose activities (as an ADR provider) relate to consumer contract disputes involving traders acting in an area for which the regulator has responsibility or oversight under any legislation. 21
- (4) In this section—
- (a) a reference to information about ADR carried out by an ADR provider includes, in the case of ADR carried out by an accredited or exempt ADR provider, information about fees charged to consumers or traders in respect of carrying out ADR, and 26
 - (b) a reference to information about special ADR arrangements includes information about fees charged to consumers or traders by the ADR provider who made the arrangements. 31
- (5) In this section references to ADR carried out by an ADR provider includes ADR to be carried out by the provider.
- (6) In this section and sections 294 to 296—
- “data protection legislation” has the meaning given by section 3 of the Data Protection Act 2018; 36
 - “regulator” means a person who has responsibility for, or oversight of, an area of activity by virtue of any legislation.

*Involvement of other bodies in the regulation of ADR providers***298 Power to provide for other persons to have accreditation functions etc**

- (1) The Secretary of State may by regulations make provision for or in connection with the conferring on another person of any function falling within subsection (2) so far as it is exercisable in such cases or circumstances as may be prescribed by the regulations, in place of the corresponding function of the Secretary of State. 5
- (2) The functions which may be the subject of regulations under this section are functions corresponding to functions of the Secretary of State under the following provisions of this Chapter as originally enacted – 10
- section 286(2)(b) (function of approving fees provisions);
 - section 288 (functions relating to applications for accreditation or extension of an accreditation);
 - section 289 (functions relating to determination of applications);
 - section 290 (functions relating to revocation or suspension of accreditations etc); 15
 - section 291(1) (fees payable by accredited ADR providers), so far as relating to the function of receiving fees;
 - section 293 (functions relating to enforcement notices);
 - section 295 (functions relating to ADR information directions); 20
 - section 296 (functions relating to disclosure of ADR information).
- (3) The powers conferred by subsection (1) include power to make provision for or in connection with –
- (a) sharing of information between any two or more relevant authorities;
 - (b) abolishing (in whole or part) a function conferred on a person by regulations under this section. 25
- (4) In subsection (3)(a) “relevant authorities” means the Secretary of State and any persons with functions conferred by regulations under this section.
- (5) Regulations under this section may amend this Chapter.
- (6) Regulations under this section are subject to the affirmative procedure. 30

*Complaints by consumers to traders***299 Duty of trader to notify consumer of ADR arrangements etc**

- (1) This section applies where a trader responds to a complaint from a consumer in respect of any matters relating to a consumer contract between them.
- (2) In subsection (1) “matters relating to a consumer contract” include anything concerning – 35
- (a) the making of the contract,
 - (b) anything done by the trader before or after making the contract,

- (c) any obligations of the trader under or relating to the contract, or
 - (d) the performance by the trader of its obligations under or relating to the contract.
- (3) The trader must, when communicating the outcome of the trader’s consideration of the complaint to the consumer, also inform the consumer about any ADR or other arrangement that is available if the consumer is dissatisfied with the outcome. 5
- (4) In subsection (3) “ADR or other arrangement” means a scheme or arrangement –
 - (a) that is available to the consumer by virtue of an obligation of the trader to participate in the scheme or arrangement imposed by –
 - (i) legislation,
 - (ii) terms of the consumer contract, or
 - (iii) other contractual arrangements to which the trader is party, and 15
 - (b) by virtue of which either or both of the following will happen if the complaint (or any part of it) is duly pursued by the consumer –
 - (i) ADR will be carried out (if or so far as the matters complained of involve a consumer contract dispute between the parties);
 - (ii) other action will be taken with a view to securing or facilitating a resolution (if or so far as the matters complained of do not involve a consumer contract dispute between the parties). 20
- (5) Section 293 (enforcement notices) applies in relation to a trader who is contravening or has contravened the duty under subsection (3) as it applies in relation to an ADR provider who is contravening or has contravened anything mentioned in section 293(1). 25
- (6) This section does not affect any other duty of a trader to give information to a consumer.

Consequential amendments etc and transitional provision

300 Consequential amendments etc relating to this Chapter 30

Schedule 24 contains consequential amendments, repeals and revocations relating to this Chapter.

301 Transitional provision relating to this Chapter

- (1) The prohibition on carrying out ADR in section 285(1) does not apply to ADR carried out by an ADR provider in relation to a consumer contract dispute where the ADR started before the prohibition came into force. 35
- (2) The prohibition on charging fees to consumers in section 286(1) does not apply to ADR carried out by an ADR provider in relation to a consumer

- contract dispute where the ADR started before the prohibition came into force.
- (3) For the purposes of subsections (1) and (2), the ADR is to be taken as starting when the dispute was first referred to the ADR provider in accordance with that provider’s rules or procedures. 5
- (4) The prohibition on charging fees to consumers in section 286(3) does not apply to ADR carried out by an ADR provider under special ADR arrangements where the ADR started before the prohibition came into force.
- (5) Subsection (2) of section 285 applies, in the case of any special ADR arrangements made by an ADR provider before that subsection comes into force, as if the prohibition in it were a prohibition against the person who made the arrangements continuing to operate them, unless that person— 10
- (a) is an exempt ADR provider whose exemption would cover making the special ADR arrangements, or
- (b) is an accredited ADR provider whose accreditation would cover making the special ADR arrangements. 15
- (6) But subsection (5) does not prevent the person from continuing to operate the special ADR arrangements so far as relating to cases in which ADR which is being carried out in relation to a consumer contract dispute started before the prohibition in section 285(1) came into force. 20
- (7) For the purposes of subsections (4) and (6) ADR is to be taken as starting when the dispute is referred—
- (a) to the person who made the special ADR arrangements in accordance with the person’s rules or procedures, or
- (b) to the person carrying out the ADR under the special ADR arrangements, in accordance with the person’s rules or procedures, whichever occurs first. 25
- (8) The duty in section 299(3) does not apply in relation to a consumer’s complaint if it was received by the trader before the coming into force of section 299.

PART 5 30

MISCELLANEOUS

CHAPTER 1

PROVISION OF INVESTIGATIVE ASSISTANCE TO OVERSEAS REGULATORS

302 Provision of investigative assistance to overseas regulators

- (1) A relevant regulator (“R”) may assist an overseas regulator (“O”) in accordance with the table in subsection (2) where— 35
- (a) O makes a request to R (see section 303) for R to assist O’s carrying out of functions—

- (i) which correspond or are similar to functions of R under a relevant enactment, but
- (ii) which are not functions relating to the investigation of crime or the bringing of criminal proceedings,
- (b) R considers that it would be appropriate to assist O (see section 304), and
- (c) the Secretary of State authorises R to assist O (see section 305).

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(2) The table in this subsection is—

Where the enactment in question is—	The regulator that may assist the overseas regulator is—	The regulator may assist the overseas regulator by—	
Part 1 of CA 1998 (competition)	the CMA	exercising its powers under sections 26 to 29 of CA 1998 as if, by assisting O’s carrying out of functions which correspond or are similar to the functions of the CMA under Part 1 of that Act, the CMA were carrying out an investigation under section 25 of that Act	15
Part 3 of EA 2002 (mergers)	the CMA	exercising its powers under section 109 of EA 2002 as if assisting O’s carrying out of functions which correspond or are similar to the functions of the CMA under Part 3 of that Act were a “permitted purpose” for the purposes of that section	20
Schedule 5 to CRA 2015 (investigatory powers)	an enforcer for the purposes of Schedule 5 to CRA 2015 (see paragraph 2 of that Schedule)	exercising the powers under Parts 3 and 4 of Schedule 5 to CRA 2015 in connection with an infringement of the law of, or other requirement imposed in, the country or territory of O which appears to R to make provision corresponding or similar to an enactment or other obligation or rule of law listed in Schedule 13 to this Act	25
Part 1 of this Act (digital markets)	the CMA	exercising its powers under any of sections 67, 69 and 77 as if assisting O’s carrying out of a function which corresponds or is similar to a digital markets function (as defined in section 115) were itself a digital markets function	30
Part 1 of this Act (digital markets)	the CMA	exercising its powers under any of sections 70, 72 and 73 as if, by assisting O’s carrying out of any investigation which	35
			40

Where the enactment in question is –	The regulator that may assist the overseas regulator is –	The regulator may assist the overseas regulator by –	
		corresponds or is similar to a digital markets investigation (as defined in section 115), the CMA were carrying out a digital markets investigation	5
(3)	For the purposes of the exercise by R of the powers under Parts 3 and 4 of Schedule 5 to CRA 2015 by virtue of this Chapter –		9
	(a) paragraphs 13, 19 and 20 of that Schedule are to be ignored;		
	(b) where a power is exercisable only by an enforcer of a particular description, the power is exercisable by R only if R is an enforcer of that description;		
	(c) references in Part 4 of that Schedule to the enforcer’s legislation, in relation to a domestic enforcer, are to be read in relation to R as references to the law of, or other requirement imposed in, the country or territory of O mentioned in the entry for that Schedule in the table in subsection (2).		14
(4)	Any reference in an enactment (other than in this Chapter) to the functions of a relevant regulator under a relevant enactment includes a reference to those functions as exercised by virtue of this Chapter.		19
(5)	In this Chapter –		
	“relevant regulator” or “R” means a regulator listed in the second column of the table in subsection (2);		24
	“overseas regulator” or “O” means a person or body in a country or territory outside the United Kingdom which appears to R to exercise functions of a public nature corresponding or similar to functions of R;		
	“relevant enactment” means an enactment listed in the first column of the table in subsection (2).		29

303 Requests for investigative assistance

- (1) Subsection (2) makes provision about requests from O for the purposes of section 302(1)(a).
- (2) A request from O to R for R to assist O must –
- be made in writing,
 - describe the matter in respect of which R’s assistance is requested, and
 - include details of any penalty or sanction that could be imposed as a result of the carrying out by O of the functions in respect of which R’s assistance is requested.

304 The appropriateness of providing investigative assistance

- (1) This subsection makes provision about how R is to consider whether it would be appropriate to assist O for the purposes of section 302(1)(b).
- (2) In considering whether it would be appropriate to assist O, R must have regard to whether –
 - (a) R would be able to exercise its powers under the relevant enactment concerned in a corresponding or similar case arising in the United Kingdom;
 - (b) the United Kingdom and the country or territory of O, or R and O, are parties to any agreements or arrangements relating in whole or in part to cooperation in matters relating to competition or consumer protection;
 - (c) the matter in respect of which the assistance is requested is sufficiently serious to justify R assisting O.
- (3) R may consider that it would not be appropriate to assist O unless O undertakes to make such contribution as R considers appropriate towards the cost of R doing so.
- (4) R must consider that it would not be appropriate to assist O if R considers that –
 - (a) a person or body in the country or territory of O (whether or not O) would not provide corresponding assistance to R, unless R considers that there is an overriding public benefit to the United Kingdom in assisting O;
 - (b) R would not be able to disclose, under Part 9 of EA 2002 (information), to O any information obtained by R in the course of assisting O;
 - (c) assisting O would be contrary to the public interest.
- (5) R must also consider that it would not be appropriate to assist O if –
 - (a) the request relates to a matter in respect of which in a corresponding or similar case arising in the United Kingdom R would not be able to exercise its powers under the relevant enactment concerned unless R has reasonable grounds for suspecting that there has, or may have, been a breach of the law (“the relevant UK law”), and
 - (b) R does not have reasonable grounds for suspecting that there has, or may have, been a breach of the law of the country or territory of O which appears to R to make provision corresponding or similar to the relevant UK law in question.
- (6) For the purposes of subsection (5)(b), R is to regard as conclusive a certificate issued by O as to whether there has, or may have, been a breach of the law of the country or territory of O.

305 Authorisation of the provision of investigative assistance

- (1) This section makes provision about how the Secretary of State authorises R to assist O for the purposes of section 302(1)(c).

-
- (2) The Secretary of State may authorise R to assist O either –
- (a) in relation to one or more specific requests for assistance, or
 - (b) generally in respect of requests for assistance of a particular description (including in respect of requests from particular overseas regulators).
- (3) The Secretary of State may withdraw any general authorisation given under subsection (2)(b). 5
- (4) The Secretary of State must publish –
- (a) any general authorisation given under subsection (2)(b);
 - (b) notice of any withdrawal of a general authorisation under subsection (3). 10
- (5) In considering whether to authorise R to assist O (whether specifically or generally), the Secretary of State must have regard to whether –
- (a) O’s request for assistance is made under, or in accordance with, the terms of a convention or treaty to which the United Kingdom is a party (and, where it is, the Secretary of State must also have regard to the terms of the convention or treaty); 15
 - (b) it would be more appropriate, in relation to the matter in respect of which R’s assistance is requested, for –
 - (i) any of R’s powers under the relevant enactment concerned to be exercised solely on behalf of R (and not by virtue of this Chapter), or 20
 - (ii) for functions to be exercised by another person or body in the United Kingdom or in a country or territory other than the country or territory of O;
 - (c) R assisting O would be contrary to the public interest. 25
- (6) In authorising R to assist O, the Secretary of State may impose conditions on R doing so.
- (7) The conditions that may be imposed include conditions –
- (a) requiring R, before assisting O, to obtain an undertaking from O that any information obtained by R in assisting O will not be used, or will only be used, for specified purposes; 30
 - (b) requiring R not to use specified powers that would otherwise be available to R in assisting O;
 - (c) requiring R to assist O by using specified powers available to R only in a specified manner; 35
 - (d) requiring R to assist O only in respect of specified matters.
- (8) In subsection (7), “specified” means specified in a condition imposed by the Secretary of State under subsection (6).

306 Notifications in respect of requests for investigative assistance

- (1) R must notify the Secretary of State that R has received a request for assistance from O where – 40

- (a) R considers that it would be appropriate for R to assist O, and
 - (b) the Secretary of State has not given R a general authorisation to provide O with the assistance requested (see section 305(2)(b)).
- (2) R must notify O as to whether R will be providing the assistance requested and, where relevant, of any conditions imposed on that assistance (see section 305(6)). 5

307 Guidance in connection with investigative assistance

- (1) The CMA must prepare and publish guidance about—
 - (a) the making and consideration of requests for assistance under this Chapter, and 10
 - (b) the provision of assistance under this Chapter.
- (2) The CMA may at any time prepare and publish revised or new guidance.
- (3) No guidance is to be published under this section without the approval of the Secretary of State.
- (4) In preparing guidance under this section the CMA must consult such persons as it considers appropriate. 15
- (5) A relevant regulator must have regard to the guidance for the time being in force when it is exercising functions under or in connection this Chapter.

308 Amendments to other legislation

Schedule 25 makes amendments to other legislation in connection with the provision made by this Chapter. 20

CHAPTER 2

DISCLOSING INFORMATION OVERSEAS

309 Disclosing information overseas

- (1) Part 9 of EA 2002 (information) is amended as follows. 25
- (2) For section 243 (overseas disclosures) substitute—

“243A Overseas disclosures for both overseas and domestic purposes

- (1) A public authority which holds information to which section 237 applies (“the discloser”) may disclose that information to an overseas public authority for the purpose of facilitating both— 30
 - (a) the exercise by the discloser of any function it has under or by virtue of this Act or any other enactment, and
 - (b) the exercise by the overseas public authority of any function which it has relating to—

- (i) carrying out investigations in connection with the enforcement of any relevant law by means of civil proceedings;
 - (ii) bringing civil proceedings for the enforcement of such law or the conduct of such proceedings; 5
 - (iii) the investigation of crime;
 - (iv) bringing criminal proceedings or the conduct of such proceedings;
 - (v) deciding whether to start or bring to an end such investigations or proceedings. 10
- (2) Subsection (1) does not apply to any of the following –
- (a) information which is held by a person who is a private designated enforcer for the purposes of Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023 (see section 143 of that Act); 15
 - (b) information which comes to a public authority in connection with an investigation under Part 4 or section 174 of this Act;
 - (c) information which comes to a public authority in connection with an investigation under section 11 of the Competition Act 1980; 20
 - (d) legacy information within the meaning of subsection (5).
- (3) In subsection (1)(a), the reference to an enactment includes a reference to an enactment contained in –
- (a) an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation; 25
 - (c) subordinate legislation.
- (4) In subsection (1)(b)(i), “relevant law” means –
- (a) this Act, any enactment specified in Schedule 14 and such subordinate legislation as is specified by order for the purposes of section 238(1); 30
 - (b) any enactment, obligation or rule of law specified in Schedule 13 to the Digital Markets, Competition and Consumers Act 2023 (consumer protection enactments);
 - (c) any legislation, or any obligation or rule of law in a country or territory outside the United Kingdom which appears to the discloser to make provision corresponding or similar to anything within paragraphs (a) and (b). 35
- (5) In subsection (2)(d), “legacy information” means information which –
- (a) comes to a public authority in connection with the exercise of its functions under or by virtue of paragraphs 15 to 18 of Schedule 24 relating to investigations under Parts 4 or 6 of the 1973 Act; 40
 - (b) came to a public authority –

- (i) before the coming into force of this section, and
- (ii) in connection with the exercise of its functions under or by virtue of paragraphs 15 to 18 of Schedule 24 relating to investigations under Part 5 of the 1973 Act;
- (c) came to a public authority –
 - (i) before 1 July 2021, and
 - (ii) in connection with an investigation under Part 3 of the Enterprise Act 2002.

243B Overseas disclosures for overseas purposes only

- (1) A public authority which holds information to which section 237 applies (“the discloser”) may disclose that information to an overseas public authority for the purpose mentioned in section 243A(1)(b). 10
- (2) Subsection (2) of section 243A applies for the purposes of subsection (1) of this section as it applies for the purposes of subsection (1) of that section. 15

243C Overseas disclosures for designated cooperation arrangement purposes

- (1) A public authority which holds information to which section 237 applies (“the discloser”) may disclose that information to an overseas public authority for a purpose permitted under or by virtue of a designated cooperation arrangement. 20
- (2) “Designated cooperation arrangement” means an arrangement or agreement that meets all of Conditions A to D.
- (3) Condition A is that the arrangement or agreement is between –
 - (a) a public authority and an overseas public authority, or 25
 - (b) the United Kingdom and a country or territory.
- (4) Condition B is that the arrangement or agreement relates to cooperation between –
 - (a) the public authority and the overseas public authority, or
 - (b) public authorities in the United Kingdom and persons or bodies 30in that country or territory,
for the purposes of facilitating the exercise of functions related to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b).
- (5) Condition C is that the arrangement or agreement provides for –
 - (a) the overseas public authority and the public authority, or 35
 - (b) a person or body in that country or territory and public authorities in the United Kingdom,to provide corresponding or substantially similar assistance to each other for the purposes of facilitating the exercise of functions related

- to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b).
- (6) Condition D is that the arrangement or agreement is designated in regulations made by the Secretary of State.
- (7) Before designating an arrangement or agreement in regulations under subsection (6), the Secretary of State must have regard in particular to whether the arrangement or agreement contains provision restricting or preventing –
- (a) the use for another purpose of information disclosed for a purpose permitted under or by virtue of the arrangement or agreement;
 - (b) the further disclosure of such information.
- (8) The Secretary of State may not designate an arrangement or agreement in regulations under subsection (6) unless the Secretary of State is satisfied that –
- (a) the law and practice of the country or territory, or the country or territory of the overseas public authority, with whom the arrangement or agreement is with provides appropriate protection against self-incrimination in criminal proceedings, and
 - (b) the law and practice of that country or territory provides appropriate protection in relation to the storage and disclosure of confidential information.
- (9) For the purposes of subsection (8), protection is appropriate if it provides protection in relation to the matter in question which corresponds or is substantially similar to that so provided in any part of the United Kingdom.
- (10) Regulations under subsection (6) are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- 243D Use and further disclosure of information disclosed under sections 243A and 243B**
- (1) Subsections (2) and (3) apply to information disclosed by virtue of section 243A to the extent that the disclosure was to facilitate the exercise by the discloser of any function it has under or by virtue of this Act or any other enactment (“the original function”) in relation to a particular matter (“the original matter”).
- (2) The information must not be used by the overseas public authority other than for facilitating the exercise by the discloser of the original function in relation to the original matter unless –
- (a) the use is for the purpose of facilitating the exercise by the discloser of any function it has under this Act or any other

- enactment (other than the original function) whether or not in relation to the original matter, and
- (b) the discloser consents to the use of that information for that purpose.
- (3) The information must not be further disclosed by the overseas public authority unless – 5
- (a) the further disclosure is for the purpose of facilitating the exercise by the discloser of any function it has under this Act or any other enactment (whether or not the original function) whether or not in relation to the original matter, and 10
- (b) the discloser consents to the further disclosure of the information for that purpose.
- (4) Subsections (5) and (6) apply to information disclosed by virtue of section 243A or 243B to the extent that the disclosure was to facilitate the exercise of functions of an overseas public authority relating to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b) (“the original function”) in relation to a particular matter (“the original matter”). 15
- (5) The information must not be used by the overseas public authority other than for facilitating the exercise by the authority of the original function in relation to the original matter unless – 20
- (a) the use is for the purpose of facilitating the exercise of a function which the authority has relating to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b) (other than the original function) whether or not in relation to the original matter, and 25
- (b) the discloser consents to the use of that information for that purpose.
- (6) The information must not be further disclosed by the overseas public authority unless – 30
- (a) the further disclosure is for the purpose of facilitating the exercise of any of its functions relating to anything mentioned in sub-paragraphs (i) to (v) of subsection (1)(b) of section 243A (whether or not the original function) whether or not in relation to the original matter, and 35
- (b) the discloser consents to the further disclosure of the information for that purpose.
- (7) In deciding whether to consent to the use or further disclosure of information for the purposes of subsection (2)(b), (3)(b), (5)(b) or (6)(b), the discloser must have regard to the considerations in section 243F to which it would be required to have regard if it were deciding to disclose the information under 243A or 243B. 40
- (8) Nothing in this section prevents information being used, or further disclosed, by the overseas public authority if that use, or further

disclosure, is required under the law of the country or territory of the authority.

243E Directions by the Secretary of State relating to overseas disclosures under sections 243A and 243B

- (1) The Secretary of State may direct that a disclosure permitted under section 243A or 243B must not be made if the Secretary of State thinks that, in connection with any matter in respect of which the disclosure could be made, it is more appropriate—
- (a) if any investigation is to be carried out, that it is carried out by an authority in the United Kingdom or in another specified country or territory (rather than by the overseas public authority);
 - (b) if any proceedings are to be brought, that they are brought in a court in the United Kingdom or in another specified country or territory (rather than in the country or territory of the overseas authority).
- (2) In subsection (1), “specified” means specified in the direction.
- (3) The Secretary of State must take such steps as the Secretary of State thinks are appropriate to bring a direction under subsection (1) to the attention of persons likely to be affected by it.

243F Relevant considerations relating to overseas disclosures under sections 243A and 243B

- (1) This section applies when a public authority is deciding whether to make a disclosure under section 243A or 243B.
- (2) In deciding whether to make a disclosure under section 243A, the public authority must have regard in particular to the following considerations—
- (a) whether the law and practice of the country or territory to whose authority the disclosure would be made provides appropriate protection against self-incrimination in criminal proceedings;
 - (b) whether the law and practice of that country or territory provides appropriate protection in relation to the storage and disclosure of confidential information.
- (3) In deciding whether to make a disclosure under section 243B, the public authority must have regard in particular to the considerations in subsection (2) and the following additional considerations—
- (a) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure;
 - (b) whether the disclosure would further the aims or purposes of any convention or treaty relating in whole or in part to

- cooperation in matters relating to competition or consumer protection to which the United Kingdom and the country or territory of the authority to whom the disclosure would be made are parties;
- (c) whether there are arrangements in place for the provision of mutual assistance as between the United Kingdom and that country or territory to whose authority the disclosure would be made in relation to the disclosure of information of the kind to which section 237 applies; 5
- (d) whether a person or body in that country or territory would assist the public authority in a way that corresponds or is substantially similar to the assistance that it is proposed the public authority give to the overseas public authority by making the disclosure. 10
- (4) For the purposes of this section, protection is appropriate if it provides protection in relation to the matter in question which corresponds or is substantially similar to that so provided in any part of the United Kingdom. 15
- (5) The Secretary of State may by regulations amend subsections (2) and (3) so as to— 20
- (a) alter any consideration for the time being included in those subsections;
- (b) add further considerations;
- (c) remove any considerations.
- (6) Regulations under subsection (5) are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House of Parliament.” 25
- (3) In section 244 (specified information: considerations relevant to disclosure)—
- (a) in subsection (2), for “information whose disclosure the authority thinks is contrary to the public interest” substitute “sensitive information”; 30
- (b) in subsection (3), for the words after “(so far as practicable)” to the end of paragraph (b) substitute “any commercial information or private information”.
- (4) In section 245 (offences) in subsection (2), for “243(4)” substitute “243E”. 35
- (5) For section 246 substitute—

“246A Interpretation

In this Part—

“commercial information” means information relating to any business of an undertaking whose disclosure the public authority concerned or, for the purposes of section 243C the 40

- Secretary of State, thinks might significantly harm the undertaking’s legitimate business interests;
- “confidential information” means commercial information, private information or sensitive information;
- “overseas public authority” means a person or body in any country or territory outside the United Kingdom which appears to the discloser (within the meaning of any of sections 243A to 243C) to exercise functions of a public nature in relation to anything mentioned in sub-paragraphs (i) to (v) of section 243A(1)(b);
- “private information” mean information relating to the private affairs of an individual whose disclosure the public authority concerned, or for the purposes of section 243C the Secretary of State, thinks might significantly harm the individual’s interests;
- “sensitive information” means information whose disclosure the public authority concerned or, for the purposes of section 243C the Secretary of State, thinks would be contrary to the public interest;
- “subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 and includes an instrument made under –
- (a) an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation.”
- (6) In section 59 of the Companies (Audit, Investigations and Community Enterprises) Act 2004 (information), in subsection (6)–
- (a) for “section 243(6)” substitute “section 243F(2) and (3)”;
 - (b) for “(overseas disclosures)” substitute “(relevant considerations relating to overseas disclosures)”.

CHAPTER 3

DUTY OF EXPEDITION

310 Duty of expedition on the CMA and sectoral regulators

- (1) In section 25 of ERRA 2013 (the Competition and Markets Authority), after subsection (4) insert –
- “(5) In making any decision, or otherwise taking action, for the purposes of any of its functions within Schedule 4A the CMA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

(2) After Schedule 4 to ERRA 2013 insert—

“SCHEDULE 4A

Section 25

FUNCTIONS TO WHICH THE CMA’S DUTY OF EXPEDITION APPLIES

PART 1

INTRODUCTION

5

1 The following functions are functions within this Schedule for the purposes of section 25(5).

PART 2

COMPETITION FUNCTIONS

Functions under the Enterprise Act 2002 10

2 Functions under Part 3 of the 2002 Act (mergers) other than functions under—

(a) section 94B (statement of policy about functions under sections 94 and 94AA);

(b) section 106 (advice and information about references under section 22 or 33); 15

(c) section 116 (statement of policy about penalties).

3 Functions under Part 4 of the 2002 Act (market studies and market investigations) other than functions under—

(a) section 166 (register of undertakings and orders); 20

(b) section 167C (statement of policy about functions under sections 167 and 167A);

(c) section 171 (advice and information about market investigation references);

(d) section 174E (statement of policy about penalties). 25

4 Functions under Part 6 of the 2002 Act (the cartel offence) other than functions under section 190A (cartel offence: prosecution guidance).

Functions under Part 1 of the Competition Act 1998

5 Functions under Part 1 of the 1998 Act (competition) other than functions under— 30

(a) section 31D (guidance about the acceptance of commitments under section 31A);

(b) section 35C (statement of policy about penalties under sections 31E, 34 and 35A); 35

(c) section 38 (the appropriate level of a penalty);

- (d) section 40B (statement of policy about penalties under section 40A);
- (e) section 51 (CMA rules);
- (f) section 52 (advice and information about the Chapter 1 and 2 prohibitions); 5
- (g) section 54 (functions of sectoral regulators).

Functions under Chapter 3 of Part 2 of the Water Industry Act 1991

- 6 Functions under sections 32 to 35 of the Water Industry Act 1991 (protection of consumers: competition provisions).

PART 3 10

CONSUMER FUNCTIONS

Functions under Part 3 of the Digital Markets, Competition and Consumers Act 2023

- 7 Functions under Part 3 of the Digital Markets, Competition and Consumers Act 2023 (enforcement powers for infringements of consumer protection law) other than functions under – 15
 - (a) section 191 (statement of policy about penalties);
 - (b) sections 203 and 204 (rules about direct enforcement functions);
 - (c) section 205 (guidance about direct enforcement functions). 20
- 8 Functions under Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2023 (protection from unfair trading).

Functions under the Consumer Rights Act 2015

- 9 (1) Functions under Schedule 3 to the Consumer Rights Act 2015 (enforcement of law on unfair contract terms and notices) other than functions under paragraph 7(2) to (5) of that Schedule (provision of information and advice). 25
- (2) Functions under Schedule 5 to the Consumer Rights Act 2015 (investigatory powers) other than functions under paragraph 16F of that Schedule (statement of policy about penalties). 30

Functions under the Business Protection from Misleading Marketing Regulations 2008

- 10 Functions under the Business Protection from Misleading Marketing Regulations 2008 (S.I. 1276/2008) other than functions under regulation 20(2) of those Regulations (provision of information and advice). 35

PART 4

DIGITAL MARKET FUNCTIONS

Functions under Part 1 of the Digital Markets, Competition and Consumers Act 2023

- 11 Functions under Part 1 of the Digital Markets, Competition and Consumers Act 2023 (digital markets) other than functions under— 5
- (a) section 58 (content of report under section 55 etc);
 - (b) section 65 (regulations about duty to notify);
 - (c) section 89 (statement of policy on penalties);
 - (d) section 113 (guidance about functions under Part 1).” 10
- (3) In consequence of the amendments made by subsections (1) and (2)—
- (a) in section 103 of EA 2002 (duty of expedition in relation to references)— 15
 - (i) in the heading, at the end insert “under section 45 or 62”;
 - (ii) omit subsection (1);
 - (b) in the Water Mergers (Modification of Enactments) Regulations 2004 (S.I. 2004/3202) omit Article 25A (modification of section 103 of EA 2002).
- (4) Schedule 26 makes provision imposing a duty of expedition on sectoral regulators in respect of their competition functions that are exercisable concurrently with the CMA. 20

PART 6

GENERAL

311 Interpretation

- In this Act— 25
- “CA 1998” means the Competition Act 1998;
 - “CRA 2015” means the Consumer Rights Act 2015;
 - “EA 2002” means the Enterprise Act 2002;
 - “ERRA 2013” means the Enterprise and Regulatory Reform Act 2013;
 - “the CMA” means the Competition and Markets Authority; 30
 - “digital content” means data which is produced and supplied in digital form;
 - “enactment” means an enactment whenever passed or made and includes—
- (a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act, 35
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

- (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru,
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
 - (e) any retained direct EU legislation; 5
- “firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association.

312 *Financial provision*

- There is to be paid out of money provided by Parliament –* 10
- (a) *any expenses incurred by the Secretary of State or the CMA under or by virtue of this Act, and*
 - (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

313 **Power to make consequential provision** 15

- (1) The Secretary of State may by regulations make provision that is consequential on this Act or on any provision made under it.
- (2) The power to make regulations under this section includes power to amend, repeal or revoke provision made by or under primary legislation passed or made before the end of the Session in which this Act is passed. 20
- (3) Regulations under this section are subject to the affirmative procedure if they amend, repeal or revoke any provision of primary legislation.
- (4) Regulations under this section to which subsection (3) does not apply are subject to the negative procedure.
- (5) In this section “primary legislation” means – 25
 - (a) an Act of Parliament (including this Act);
 - (b) an Act of the Scottish Parliament;
 - (c) a Measure or Act of Senedd Cymru;
 - (d) Northern Ireland legislation;
 - (e) retained direct principal EU legislation. 30

314 **Regulations**

- (1) A power to make regulations under any provision of this Act includes power to make –
 - (a) consequential, supplementary, incidental, transitional or saving provision; 35
 - (b) different provision for different purposes.
- (2) Regulations under this Act are to be made by statutory instrument.

- (3) Where regulations under this Act are subject to “the affirmative procedure”, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Where regulations under this Act are subject to “the negative procedure”, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (5) Any provision that may be made by regulations under this Act subject to the negative procedure may be made in regulations subject to the affirmative procedure. 10
- (6) This section does not apply to regulations under section 316.

315 Extent

- (1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any amendment, repeal or revocation made by this Act has the same extent as the provision amended, repealed or revoked. 15

316 Commencement

- (1) Except as provided by subsection (2), this Act come into force on such day as the Secretary of State may by regulations appoint.
- (2) The following provisions come into force on the day on which this Act is passed – 20
 - (a) this Part;
 - (b) any other provision of this Act so far as it confers power to make regulations or is otherwise necessary for enabling the exercise of such a power on or after the day on which this Act is passed. 25
- (3) Different days may be appointed under subsection (1) for different purposes.
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) The power to make regulations under subsection (4) includes power to make different provision for different purposes. 30
- (6) Regulations under this section are to be made by statutory instrument.

317 Short title

This Act may be cited as the Digital Markets, Competition and Consumers Act 2023.

SCHEDULES

SCHEDULE 1

Section 36

PROCEDURE RELATING TO COMMITMENTS

Application of Schedule

- 1 This Schedule applies for the purposes of Chapters 3 and 4 in relation to— 5
- (a) accepting a commitment,
 - (b) accepting a variation of a commitment (a “requested variation”), or
 - (c) releasing an undertaking from the requirement to comply with a commitment.

Procedure for accepting a commitment or requested variation 10

- 2 (1) Before accepting a commitment or a requested variation the CMA must—
- (a) publish a notice under this paragraph, and
 - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) The notice must include— 15
- (a) the commitment or requested variation that the CMA proposes to accept,
 - (b) the conduct requirement or, as the case may be, actual or suspected adverse effect on competition to which the commitment or variation relates, 20
 - (c) the CMA’s reasons for its proposed decision, and
 - (d) the period within which representations may be made in relation to the proposed commitment or requested variation.
- 3 (1) Before accepting a modification of a commitment or requested variation, of which notice has been given under paragraph 2(1), the CMA must— 25
- (a) publish a notice under this paragraph, and
 - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) The notice must include—
- (a) the proposed modifications, 30
 - (b) the reasons for them, and
 - (c) the period within which representations may be made in relation to them.
- 4 The CMA must publish notice of its decision on whether to, and the form in which it will, accept a commitment or a requested variation as soon as reasonably practicable. 35

- 5 The requirements of paragraphs 2 and 3 do not apply in relation to a proposed modification which the CMA does not consider material.

Procedure for releasing an undertaking from a commitment

- 6 (1) Before releasing an undertaking from a commitment the CMA must—
- (a) publish a notice under this paragraph, and 5
 - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) The notice must include—
- (a) that the CMA proposes to release the undertaking from the commitment, 10
 - (b) the reasons for the CMA's proposal, and
 - (c) the period within which representations may be made in relation to the proposal.
- 7 The CMA must publish a notice of its decision on whether to release an undertaking from a commitment as soon as reasonably practicable. 15

SCHEDULE 2

Section 55

MERGERS: HOLDING OF INTERESTS AND RIGHTS

Joint interests

- 1 If two or more persons each hold an interest or right jointly, each of them is treated as holding that interest or right. 20

Joint arrangements

- 2 (1) If interests or rights held by a person and interests or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined interests or rights of both of them. 25
- (2) A "joint arrangement" is an arrangement between the holders of interests or rights that they will exercise all or substantially all the rights conferred by their respective interests, or their respective rights, jointly in a way that is pre-determined by the arrangement.

Interests held by nominees 30

- 3 An interest held by a person as nominee for another is to be treated as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise

- 4 (1) Where a person controls a right, the right is to be treated as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person "controls" a right if, by virtue of any arrangement between that person and others, the right is exercisable only – 5
- (a) by that person,
 - (b) in accordance with that person's directions or instructions, or
 - (c) with that person's consent or concurrence.

Rights exercisable only in certain circumstances etc 10

- 5 (1) Rights that are exercisable by a person only in certain circumstances are to be treated as held by the person only –
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
 - (b) when the circumstances are within the control of the person. 15
- (2) But rights that are exercisable by an administrator or by creditors while an entity is in relevant insolvency proceedings are not to be regarded as held by the administrator or creditors even while the entity is in those proceedings.
- (3) "Relevant insolvency proceedings" means – 20
- (a) administration within the meaning of the Insolvency Act 1986,
 - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (c) proceedings under the insolvency law of another country or territory during which an entity's assets and affairs are subject to the control or supervision of a third party or creditor. 25
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are not for that reason to be treated as not being held.

Rights attached to shares held by way of security

- 6 Rights attached to shares held by way of security provided by a person are to be treated as held by that person – 30
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions, and
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests. 35

Arrangements

- 7 (1) In this Schedule “arrangement” includes—
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
 - (b) any convention, custom or practice of any kind. 5
- (2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

SCHEDULE 3

Section 121

POWER OF COMPETITION APPEAL TRIBUNAL TO GRANT DECLARATORY RELIEF 10

- 1 Chapter 4 of Part 1 of CA 1998 (appeals before the Competition Appeal Tribunal etc) is amended as follows.
- 2 In the italic heading before section 47A, after “damage” insert “, or for declaratory relief”.
- 3 In section 47A (proceedings before the Tribunal: claims for damages etc), after subsection (3) insert— 15
- “(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.” 20
- 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. 25
 - (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.
 - (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. 30
 - (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. 35

- (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.”
- 5 In the italic heading before section 47F, after “damage” insert “, or for declaratory relief,”. 5
- 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,”.
- 7 (1) In section 49 (further appeals from the Tribunal), subsection (1A) is amended as follows. 10
- (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.”
- 8 (1) Schedule 8A (further provision about claims in respect of loss or damage before a court or the Tribunal) is amended as follows. 15
- (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 –
- (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 – 20
- (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 25
- (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 – 30
- “(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 35
- (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.” 40

- (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 –
- (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.” 5
- (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; 10
- (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”. 15
- (13) Omit paragraph 44 (definition of “relevant day”).
- 9 In Schedule 4 to EA 2002 (Competition Appeal Tribunal: procedure), after paragraph 21A insert–
- “*Declarations and declarators*” 20
- 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.”

SCHEDULE 4

Section 124 25

RELEVANT AND SPECIAL MERGER SITUATIONS

- 1 Chapter 1 of Part 3 of EA 2002 (mergers: duty to make references) is amended as follows.
- 2 (1) Section 23 (relevant merger situations) is amended as follows.
- (2) In subsection (1), in paragraph (b), for “£70 million” substitute “£100 million”. 30
- (3) In subsection (2)–
- (a) omit the “and” at the end of paragraph (a);
- (b) at the end insert “; and
- (c) the value of the turnover in the United Kingdom of– 35
- (i) the enterprise being taken over, or
- (ii) any other enterprise concerned,

exceeds £10 million.”

(4) Before subsection (3) insert—

“(2B) For the purposes of subsection (2)(c)(ii), any turnover of any other enterprise concerned that is also turnover of the enterprise being taken over is to be ignored.”

5

(5) Before subsection (5) insert—

“(4C) For the purposes of this Part, a relevant merger situation has also been created if—

- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
- (b) each of the conditions mentioned in subsections (4D) to (4F) is satisfied.

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(4D) The condition mentioned in this subsection is that, were it not for the enterprises concerned ceasing to be distinct enterprises, in relation to the supply of goods or services of any description, at least 33 per cent of all the goods or (as the case may be) services of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom, would be supplied—

15

- (a) by the person or persons by whom one of the enterprises concerned (“E”) would be carried on, or
- (b) to that person or those persons,

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in connection with E or any other enterprise concerned with which E is under common ownership or common control.

(4E) The condition mentioned in this subsection is that the total value of the turnover in the United Kingdom of E exceeds £350 million.

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(4F) The condition mentioned in this subsection is that, were it not for the enterprises concerned ceasing to be distinct enterprises, an enterprise within subsection (4G) would satisfy one or more of the following additional conditions—

- (a) the enterprise would be carried on by a body of persons corporate or unincorporate formed or recognised under the law of any part of the United Kingdom;
- (b) the activities, or part of the activities, of the enterprise would be carried on in the United Kingdom;
- (c) the person, or persons, by whom the enterprise would be carried on supply goods or services to a person or persons in the United Kingdom in connection with the enterprise.

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35

(4G) The following enterprises are within this subsection—

- (a) any enterprise concerned other than—
 - (i) E, or
 - (ii) any other enterprise with which E is under common ownership or common control;

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- (b) any enterprise concerned that, as a result of the enterprises concerned ceasing to be distinct enterprises, a person or group of persons may be treated as having brought under their control by virtue of section 26(4).”
- (6) In subsection (5), after “(4)” insert “, or of 33 per cent mentioned in subsection (4D),”.
- (7) In subsection (6), for “and (4)” substitute “, (4), (4D) and (4F)(c)”.
- 3 (1) Section 28 (turnover test) is amended as follows.
- (2) In subsection (5)–
- (a) in paragraph (a)–
- (i) for “sum” substitute “sums”;
- (ii) after “section 23(1)(b)” insert “, (2)(c) and (4E)”;
- (b) in paragraph (b), for “sum is” substitute “sums are”.
- (3) In subsection (6)–
- (a) after “section 23(1)(b)” insert “, (2)(c) or (4E)”;
- (b) for “the sum” substitute “any of the sums”.
- 4 In Chapter 2 of Part 3 of EA 2002 (mergers: public interest cases), in section 58A (construction of consideration specified in section 58(2C)), in subsection (1), for “section 58 and this section” substitute “this Part”.
- 5 (1) In Chapter 3 of Part 3 of EA 2002 (mergers: other special cases), section 59 (intervention by Secretary of State in special public interest cases) is amended as follows.
- (2) For subsections (3) and (3A) substitute –
- “(3) For the purposes of this Part, a special merger situation has been created if–
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24;
- (b) no relevant merger situation has been created; and
- (c) immediately before the enterprises concerned ceased to be distinct, one or more of the conditions mentioned in subsections (3C) to (3F) were satisfied.”
- (3) After subsection (3D) insert –
- “(3E) The condition mentioned in this subsection is that a relevant merger situation would have been created if, in subsection (1) of section 23–
- (a) the “and” at the end of paragraph (a) were omitted;
- (b) for paragraph (b) there were substituted –
- “(b) one of the enterprises concerned is a media enterprise or a newspaper enterprise; and”;

SCHEDULE 5

Section 125

MERGERS: FAST-TRACK REFERENCES UNDER SECTIONS 22 AND 33 OF EA 2002

- | | | |
|---|--|----|
| 1 | Chapter 1 of Part 3 of EA 2002 (mergers: duty to make references) is amended as follows. | |
| 2 | (1) Section 22 (duty to make references in relation to completed mergers) is amended as follows. | 5 |
| | (2) After subsection (1) insert— | |
| | “(1A) The CMA must make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA has decided, under section 34ZF(2), to accept a fast-track reference request.” | 10 |
| | (3) In subsection (2), in the words before paragraph (a), for “this section” substitute “subsection (1)”. | |
| | (4) In subsection (3), in the words before paragraph (a), for “this section” substitute “subsection (1)”. | 15 |
| 3 | (1) Section 33 (duty to make references in relation to anticipated mergers) is amended as follows. | |
| | (2) After subsection (1) insert— | |
| | “(1A) The CMA must make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA has decided, under section 34ZF(3), to accept a fast-track reference request.” | 20 |
| | (3) In subsection (2), in the words before paragraph (a), for “this section” substitute “subsection (1)”. | |
| | (4) In subsection (3), in the words before paragraph (a), for “this section” substitute “subsection (1)”. | 25 |
| 4 | (1) Section 34ZA (time-limits for decisions about references) is amended as follows. | |
| | (2) In subsection (1)— | |
| | (a) in the words before paragraph (a), for “section 22 or 33” substitute “section 22(1) or 33(1)”; 30 | |
| | (b) in paragraph (a), for “the section” substitute “the subsection”. | |
| | (3) After that subsection insert— | |
| | “(1A) In carrying out its function of making a reference under section 22(1A) or 33(1A), the CMA must, within the initial period, inform the persons carrying on the enterprises concerned by notice of the making of the reference.” | 35 |
| | (4) In subsection (2), in the words before paragraph (a), for “section 22 or 33” substitute “section 22(1) or 33(1)”. | |

- 5 In section 34ZB (extension of time-limits), in subsection (1), for “mentioned
in” substitute “for the purposes of”.
- 6 In section 34ZC (sections 34ZA and 34ZB: supplementary), in subsection
(1), for “period mentioned in” substitute “initial period for the purposes
of”. 5
- 7 After section 34ZC (sections 34ZA and 34ZB: supplementary) insert—
- “34ZD Fast-track reference requests**
- (1) Subsection (2) applies where the following conditions are met—
- (a) arrangements or proposed arrangements might have resulted
or might result in the creation of a relevant merger situation 10
(the “arrangements concerned”),
- (b) no reference has been made under section 22 or 33 in respect
of the arrangements concerned, and
- (c) the CMA has not informed the persons carrying on the
enterprises concerned of a decision that the duty to make a 15
reference under section 22(1) or 33(1) does not apply in
respect of those arrangements.
- (2) The persons carrying on the enterprises concerned may make a
fast-track reference request to the CMA at any time before the end
of the initial period (whether or not that period has begun). 20
- (3) In this section and in sections 34ZE and 34ZF, “fast-track reference
request” means a request that the CMA makes a reference under
section 22(1A) or 33(1A) in relation to the arrangements concerned.
- 34ZE Fast-track reference requests: procedure**
- (1) This section applies where a fast-track reference request is made 25
and not withdrawn.
- (2) Where the fast-track reference request is made before the beginning
of the initial period, the CMA may, at any time before the beginning
of that period, reject the request.
- (3) Where the CMA has not rejected the fast-track reference request in 30
accordance with subsection (2), the CMA must, within the decision
period, decide whether to accept the request in accordance with
section 34ZF or reject the request.
- (4) Where the CMA accepts or rejects a fast-track reference request, the 35
CMA must notify the persons carrying on the enterprises concerned
that the request has been accepted or rejected.
- (5) In this section—
“decision period” means, in relation to the arrangements
concerned—

- (a) in a case where the initial period has not begun, that period, or
- (b) in a case where the initial period has begun, the period beginning with the day on which the fast-track reference request is made and ending at the end of the initial period; 5
- “initial period” has the meaning given by section 34ZA(3).
- 34ZF Acceptance by the CMA of fast-track reference requests**
- (1) The CMA may accept a fast-track reference request only if the condition in subsection (2) or (3) is met. 10
- (2) The condition in this subsection is that, in relation to the arrangements concerned –
- (a) the CMA believes that it is or may be the case that a relevant merger situation has been created, and
- (b) the CMA would not be prevented from making a reference under section 22(1) by reason of section 22(3). 15
- (3) The condition in this subsection is that, in relation to the arrangements concerned –
- (a) the CMA believes that it is or may be the case that, if carried into effect, the arrangements will result in the creation of a relevant merger situation, and 20
- (b) the CMA would not be prevented from making a reference under section 33(1) by reason of section 33(3).
- (4) In deciding whether to accept a fast-track reference request under subsection (2) or (3), the CMA must have regard, in particular, to – 25
- (a) whether the arrangements concerned raise any consideration specified in section 58;
- (b) whether a special intervention notice (see section 59(2)) is in force in relation to the arrangements.
- (5) Where the CMA decides to accept a fast-track reference request the duties to make references under sections 22(1) and 33(1) do not apply, and accordingly the CMA may not make any reference under those provisions in respect of the arrangements concerned (but see the duties under sections 22(1A) and 33(1A)).” 30
- 8 (1) Section 39 (time-limits for investigations and reports) is amended as follows. 35
- (2) In subsection (3), after “section 38” insert “on a reference under section 22(1) or 33(1)”.
- (3) After that subsection insert –
- “(3A) The CMA may extend, by no more than 11 weeks, the period within which a report under section 38 on a reference under section 22(1A) or 33(1A) is to be prepared and published if it considers that there 40

- are special reasons why the report cannot be prepared and published within that period.”
- 9 (1) In Chapter 4 of Part 3 of EA 2002 (mergers: enforcement), section 73 (undertakings in lieu of references under section 22 or 33) is amended as follows. 5
- (2) In the heading, for “section 22 or 33” substitute “section 22(1) or 33(1)”.
- (3) In subsection (1), for “section 22 or 33” substitute “section 22(1) or 33(1)”.
- 10 Chapter 5 of Part 3 of EA 2002 (mergers: supplementary) is amended as follows.
- 11 In section 104 (certain duties of relevant authorities to consult), in subsection (6), in the definition of “relevant decision”, in paragraph (a)– 10
- (a) in sub-paragraph (i), for “section 22 or 33” substitute “section 22(1) or 33(1)”;
- (b) in sub-paragraph (ii), for “such a reference” substitute “a reference under section 22 or 33”. 15
- 12 (1) Section 107 (further publicity requirements) is amended as follows.
- (2) In subsection (1)–
- (a) in paragraph (a), for “section 22 or 33” substitute “section 22(1) or 33(1)”;
- (b) after paragraph (aa) insert– 20
- “(aaa) any decision made by it to accept a fast-track reference request under section 34ZD and the resulting reference made by it;”.
- (3) In subsection (6), after “in relation to” insert “–
- (a) any decision published under subsection (1)(aaa), or 25
- (b) ”.
- 13 In section 130 (interpretation), in the appropriate place insert–
- “Fast-track reference request section 34ZD(3)”.

SCHEDULE 6

Section 131

ACCEPTANCE OF UNDERTAKINGS AT ANY STAGE OF A MARKET STUDY OR INVESTIGATION 30

- 1 Part 4 of EA 2002 (market studies and market investigations) is amended as follows.
- 2 (1) Section 131B (market studies and the making of decisions to refer: time-limits) is amended as follows.

- (2) In subsection (4), in paragraph (b), after “proposes to take” insert “, or has taken,”.
- (3) In subsection (5), in paragraph (a), for “section 154 instead of” substitute “section 154A instead of, or in addition to,”.
- 3 (1) Section 133A (functions to be exercised by CMA groups) is amended as follows. 5
- (2) In subsection (1), after paragraph (b) insert—
- “(ba) section 154A, so far as relating to undertakings in lieu of a report;”.
- (3) In subsection (2), before paragraph (a) insert— 10
- “(za) section 154A, so far as relating to undertakings in lieu of a report;”.
- 4 In section 136 (investigations and reports on market investigation references), in subsection (2), after paragraph (a) insert—
- “(aa) any decision of the CMA under section 154A to accept an undertaking partially in lieu of a report;”.
- 5 (1) Section 139 (public interest intervention by the Secretary of State) is amended as follows.
- (2) In subsection (1A), in paragraph (a), for “under section 154” substitute “fully in lieu of a reference under section 154A”. 20
- (3) In subsection (1B), in paragraph (a), for “under section 154” substitute “fully in lieu of a reference under section 154A”.
- (4) In subsection (2), in paragraph (a), in sub-paragraph (i), for “undertaking under section 154 instead of making a reference under section 131” substitute “undertaking in lieu of a reference under section 154A”. 25
- (5) In subsection (4C), for “154” substitute “154A”.
- 6 (1) Section 140 (intervention notices under section 139(1)) is amended as follows.
- (2) In subsection (5), in paragraph (za), for “under section 154” to the end substitute “fully in lieu of a reference under section 154A”.
- (3) In subsection (6A), for “154” substitute “154A”. 30
- 7 In section 150 (power of veto of Secretary of State), in subsection (A1) for “under section 154” substitute “in lieu of a reference under section 154A”.
- 8 For section 154 (and the italic heading immediately before it) substitute—
- “Undertakings in lieu*
- 154A Undertakings fully or partially in lieu of references or reports** 35
- (1) This section applies where—
- (a) no market study notice has been published under section 130A but the CMA considers that it has the power to make

- a market investigation reference under section 131 and (subject to taking action under this section) intends to make such a reference,
 - (b) a market study notice has been published under section 130A but no market investigation reference has been made under section 131, or 5
 - (c) a market investigation reference has been made under section 131 or 132 but no report under section 136 has been published.
- (2) The CMA may accept, from such persons as it considers appropriate, undertakings to take such action as it considers appropriate for the purposes of remedying, mitigating or preventing (to any extent) – 10
 - (a) any adverse effect on competition concerned, or
 - (b) any detrimental effect on customers so far as – 15
 - (i) it has resulted from the adverse effect on competition, or
 - (ii) it may be expected to result from the adverse effect on competition.
- (3) An undertaking under this section is known as – 20
 - (a) an “undertaking in lieu of a reference” where it is accepted in circumstances where this section applies by virtue of subsection (1)(a) or (b);
 - (b) an “undertaking in lieu of a report” where it is accepted in circumstances where this section applies by virtue of subsection (1)(c). 25
- (4) The CMA may accept –
 - (a) undertakings in lieu of a reference either –
 - (i) instead of making a reference under section 131 (in which case the undertakings are known as “undertakings fully in lieu of a reference”), or 30
 - (ii) in addition to making a reference under that section (in which case the undertakings are known as “undertakings partially in lieu of a reference”);
 - (b) undertakings in lieu of a report either –
 - (i) instead of publishing a report under section 136 (in which case the undertakings are known as “undertakings fully in lieu of a report”), or 35
 - (ii) in addition to publishing a report under that section (in which case the undertakings are known as “undertakings partially in lieu of a report”). 40
- (5) In accepting undertakings fully in lieu of a reference or undertakings fully in lieu of a report, the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to –

- (a) the adverse effect on competition concerned, and
 - (b) any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (6) In accepting an undertaking under this section, the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned. 5
- (7) Where no detrimental effect on customers has yet resulted from an adverse effect on competition, the CMA may not accept an undertaking under this section to remedy, mitigate or prevent a detrimental effect on customers so far as it may be expected to result from that adverse effect on competition unless the adverse effect on competition is also being remedied, mitigated or prevented (whether or not by the same undertaking). 10
- (8) An undertaking under this section— 15
- (a) comes into force when accepted;
 - (b) may be varied or superseded by another undertaking;
 - (c) may be released by the CMA.
- (9) The CMA must, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section. 20
- (10) This section is subject to sections 150 and 155.”
- 9 (1) Section 155 (undertakings in lieu: procedural requirements) is amended as follows.
- (2) In subsection (1), for “154” substitute “154A”. 25
 - (3) For subsection (3) substitute—
 - “(3A) The matters to be included in a notice under subsection (1) by virtue of subsection (2) include, in particular, the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the CMA has identified.” 30
 - (4) In subsection (10), for “154” substitute “154A”.
- 10 (1) Section 156 (effect of undertakings under section 154) is amended as follows.
- (2) In the heading, for “under section 154” substitute “in lieu”;
 - (3) In subsection (A1)— 35
 - (a) in paragraph (a), for “154” substitute “154A”;
 - (b) in paragraph (b)—
 - (i) for “the” in the first place it occurs substitute “any”;
 - (ii) “the same as the” substitute “a”.
 - (4) In subsection (1)— 40

- (a) in paragraph (a), for “under section 154” substitute “in lieu of a reference under section 154A”;
 - (b) omit the “and” after paragraph (a);
 - (c) after paragraph (a) insert –
 - “(ab) any feature or combination of features to which the undertaking or group of undertakings relates is a feature or combination of features to which the reference would relate; and”.
- (5) In subsection (3), in the words before paragraph (a), for “154” substitute “154A”. 5
- (6) After subsection (3) insert – 10
- “(4) Where the CMA has, under section 154A, accepted an undertaking, or group of undertakings, in lieu of a report the CMA is not required by virtue of section 134 to make the decisions referred to in subsections (1) and (1A) of that section in relation to a feature, or features, to which the undertaking, or group of undertakings, relate. 15
 - (5) Accordingly, a report under section 136 is not required, and the duty under section 138 does not arise, if the CMA accepts an undertaking fully in lieu of a report.
 - (6) Instead, where the CMA accepts an undertaking fully in lieu of a report the CMA must prepare and publish a report containing – 20
 - (a) the CMA’s decision to accept the undertaking,
 - (b) the reasons for the decision, and
 - (c) such information as the CMA considers appropriate for facilitating a proper understanding of the decision and its reasons for the decision. 25
 - (7) For provision equivalent to subsection (6) in the case where the CMA accepts an undertaking partially in lieu of a report, see section 136(2)(aa).”
- 11 After section 156 insert – 30
- “Interim undertakings and orders”.*
- 12 After section 158 insert –
- “Final undertakings and orders”.*
- 13 (1) Section 162 (duty of CMA to monitor the carrying out of undertakings and orders: Part 4) is amended as follows. 35
- (2) In subsection (4), in paragraphs (a) and (b), for “154” substitute “154A”.
 - (3) In subsection (8), in the definition of “enforcement undertaking”, for “154” substitute “154A”.

- 14 In section 169(6) (certain duties of relevant authorities to consult: Part 4), in paragraph (a)(ia) of the definition of “relevant decision”, for “under section 154” to the end substitute “in lieu of a reference under section 154A”.
- 15 (1) Section 174C (section 174B: supplementary provision) is amended as follows. 5
 (2) In subsection (3), in paragraph (b), for “under section 154 instead of making such a reference” substitute “fully in lieu of a reference under section 154A”.
 (3) In subsection (5), for “154” substitute “154A”.
- 16 In section 183 (interpretation: Part 4), in subsection (3), in paragraph (a)— 10
 (a) omit the “or” at the end of sub-paragraph (iii);
 (b) after that sub-paragraph insert—
 “(iiia) the CMA has accepted an undertaking fully in lieu of a report under section 154A; or”.
- 17 In Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the CMA), in Part 2 (the CMA Board), in paragraph 29 (delegation), in sub-paragraph (2)(e), for “under section 154” substitute “in lieu of a reference under section 154A”. 15

SCHEDULE 7

Section 132

FINAL UNDERTAKINGS AND ORDERS: POWER TO CONDUCT TRIALS

- 1 Part 4 of EA 2002 (market studies and market investigations) is amended as follows. 20
- 2 (1) Section 133A (functions to be exercised by CMA groups) is amended as follows.
 (2) In subsection (1)—
 (a) in paragraph (a), for “138B” substitute “137”; 25
 (b) after that paragraph insert—
 “(aa) sections 138 to 138B so far as relating to an adverse effect on competition in respect of which the CMA is required to take action in accordance with section 138(2) within the period permitted by section 138A(1);”;
 (c) after paragraph (f) insert—
 “(fa) section 161C;”. 30
- (3) In subsection (2), after paragraph (c) insert—
 “(ca) section 162B;”. 35
- 3 (1) Section 138A (time-limits for discharging duty under section 138) is amended as follows.

- (2) Before subsection (1) insert—
- “(A1) Subsection (A3) applies in relation to an adverse effect on competition in respect of which the CMA—
- (a) has begun an implementation trial under section 161C, or
 - (b) considers that it is not reasonably practicable to discharge its duty under section 138(2) in accordance with subsection (1) as a result of such an implementation trial in respect of another adverse effect on competition.
- (A2) Subsection (1) applies in relation to any other adverse effect on competition.
- (A3) Where this subsection applies, the CMA must discharge its duty under section 138(2) before the day specified under section 161D(5)(b)(ii).”
- (3) In subsection (1), at the beginning insert “Where this subsection applies,”.
- (4) In subsection (2), after “discharged” insert “in accordance with subsection (1)”.
- 4 After section 161A (acceptance of enforcement undertakings: Part 4) (inserted by paragraph 15 of Schedule 9) insert—
- “Implementation trials of final orders and undertakings*
- 161B Implementation trials: purpose and interpretation**
- (1) This section and sections 161C to 161E make provision in relation to the acceptance of undertakings and making of orders by a relevant authority on a trial basis for the purpose of assessing the effectiveness of qualifying remedial action (and the acceptance of undertakings and making of orders on that basis is referred to in this Part as an “implementation trial”).
- (2) In this section and in sections 161C to 161E “relevant authority” means the CMA or the Secretary of State.
- (3) In this Part—
- “implementation trial measure” means an undertaking accepted, or order made, under section 161C (and references to the imposition of such a measure are to be read as the acceptance of an undertaking or the making of an order, as the case may be);
- “implementation trial period” means, in relation to an implementation trial measure, the period—
- (a) beginning with the day on which the relevant authority begins the implementation trial, and

- (b) ending with the last day on which the implementation trial measure is to have effect (see subsections (4) and (5));
- “qualifying remedial action” means remedial action in respect of— 5
- (a) a matter concerning the provision or publication of information to consumers (whether directly or through an intermediary), or
- (b) any other matter specified in regulations made by the Secretary of State; 10
- “relevant adverse effect” means—
- (a) where the relevant authority is the CMA, an adverse effect on competition identified in the report mentioned in section 138(1);
- (b) where the relevant authority is the Secretary of State— 15
- (i) an adverse effect on competition identified in the report mentioned in section 146(1);
- (ii) an effect adverse to the public interest identified in the report mentioned in section 146A(1); 20
- “remedial action” means an action—
- (a) where the relevant authority is the CMA, to be taken in accordance with section 138(2) or section 162A(5);
- (b) where the relevant authority is the Secretary of State, to be taken in accordance with section 147(2) or 147A(2) (as the case may be). 25
- (4) The last day on which an implementation trial measure is to have effect is the earlier of—
- (a) the day specified under section 161D(5)(b)(ii), and 30
- (b) the day on which action is taken under section 138(2), 147(2) or 147A(2) (as the case may be) in relation to the relevant adverse effect which the relevant authority considers concerns the same qualifying matter.
- (5) But where— 35
- (a) an implementation trial measure is imposed in accordance with this section, and
- (b) the CMA extends, under section 138A(3), the period within which its duty under section 138(2) is required to be discharged in accordance with section 138A(A3) in relation to the measure, 40
- the last day on which the implementation trial measure is to have effect is the last day of that period as so extended.

161C Power to conduct implementation trials

- (1) The CMA may, in relation to a market investigation reference, begin an implementation trial where –
 - (a) subsection (2) of section 138 applies (see subsection (1) of that section), and 5
 - (b) the CMA has not taken, but is minded to take, qualifying remedial action.
- (2) The Secretary of State may, in relation to a restricted PI reference or a full PI reference, begin an implementation trial where –
 - (a) subsection (2) of section 147, or subsection (2) of 147A (as the case may be), applies (see subsection (1) of the section in question), and 10
 - (b) the Secretary of State has not taken, but is minded to take, qualifying remedial action.
- (3) Subsections (1) and (2) are subject to the duty to publish notices in section 161D. 15
- (4) The relevant authority begins an implementation trial by –
 - (a) accepting, from such persons as the relevant authority considers appropriate, undertakings under this section to take action specified or described in the undertakings, or 20
 - (b) making an order under this section,
for the purposes of assessing, during the implementation trial period, the likely effectiveness of the qualifying remedial action.
- (5) Where the relevant authority begins an implementation trial, the relevant authority may also – 25
 - (a) accept, from such persons as the relevant authority considers appropriate, undertakings under this section to take action specified or described in the undertakings, or
 - (b) make an order under this section,
in the circumstances mentioned in subsection (6). 30
- (6) The circumstances are that the relevant authority considers that accepting the undertakings or making the order would be likely to contribute to, or otherwise be of use for purposes of, remedying, mitigating or preventing, during the implementation trial period –
 - (a) an adverse effect on competition identified in the report concerned or (as the case may be) an effect adverse to the public interest which has resulted from, or may be expected to result from, the features or combinations of features mentioned; 35
 - (b) any detrimental effect on customers so far as it has resulted from, or may be expected to result from, any such adverse effect on competition. 40

161D Implementation trials: notices

- (1) Before the relevant authority begins an implementation trial under section 161C(4), the relevant authority must publish –
 - (a) a provisional implementation trial notice, and
 - (b) a final implementation trial notice (but see subsection (4)). 5

- (2) A provisional implementation trial notice must –
 - (a) specify each implementation trial measure the relevant authority is minded to impose for the purposes of the implementation trial;
 - (b) specify the relevant adverse effect with which each measure is seeking to deal; 10
 - (c) specify any other facts which the relevant authority considers justify the imposition of each measure;
 - (d) specify, in relation to each measure –
 - (i) how the relevant authority intends to assess the likely effect of the measure, and 15
 - (ii) the last day on which the relevant authority intends for the measure to have effect;
 - (e) invite the making of representations by the persons on which the relevant authority is minded to impose one or more implementation trial measure (“implementation trial participants”) about the matters set out in the notice; 20
 - (f) specify the means by which, and the time by which, such representations must be made.

- (3) The time specified under subsection (2)(f) by which representations must be made must be at least 15 days after the date on which the provisional implementation trial notice is published. 25

- (4) A relevant authority may publish a final implementation trial notice only where –
 - (a) the relevant authority has published a provisional implementation trial notice under subsection (1), 30
 - (b) the time for the implementation trial participants to make representations to the relevant authority in accordance with the notice has expired, and
 - (c) after considering such representations (if any), it appears to the relevant authority that it is appropriate to begin an implementation trial under section 161C(4). 35

- (5) A final implementation trial notice must specify –
 - (a) the implementation trial measures the relevant authority intends to impose for the purposes of the implementation trial, 40
 - (b) in relation to each such measure –

- (i) how the relevant authority intends to assess the likely effect of the measure, and
- (ii) the last day on which the measure is to have effect.

161E Implementation trials: supplementary

- (1) The relevant authority may not accept an undertaking from a person under section 161C unless it has provided the person with information about the possible consequences of failing to comply with the undertaking. 5
 - (2) The CMA may not begin an implementation trial under section 161C(4) – 10
 - (a) in respect of qualifying remedial action that would be taken in accordance with subsection (2) of section 138, after the end of the period within which the CMA would otherwise have been required to discharge its duty under that subsection; 15
 - (b) in respect of qualifying remedial action that would be taken in accordance with section 162A(5), after the end of the period mentioned in section 162A(6).
 - (3) Subsections (3), (5) and (6) of section 138 apply to action taken by the CMA under section 161C as they apply to action taken by the CMA under section 138(2). 20
 - (4) Subsections (3)(b), (4), (5) and (6) of section 147 apply to action taken by the Secretary of State under section 161C in relation to a restricted PI reference as they apply to action taken by the Secretary of State under section 147(2). 25
 - (5) Subsections (3) and (4)(b) of section 147A apply to action taken by the Secretary of State under section 161C in relation to a full PI reference as they apply to action taken by the Secretary of State under section 147A(2).
 - (6) Subsections (3) to (5) of section 159 apply to undertakings accepted under section 161C as they apply to undertakings accepted under section 159(1). 30
 - (7) Subsections (3) and (4) of section 161 apply to orders made under section 161C as they apply to orders made under section 161(1).”
- 5 After section 162A (inserted by section 133(4)) insert – 35

“162B Power to vary etc undertakings and orders: implementation trials

- (1) This section applies in relation to implementation trial measures imposed in accordance with section 161C.
- (2) The CMA must keep under review the effectiveness of the implementation trial measures. 40

- (3) The CMA must, in particular, from time to time consider –
- (a) whether an implementation trial measure has been or is being complied with;
 - (b) whether an undertaking accepted under section 161C is no longer appropriate and – 5
 - (i) one or more of the parties to it can be released from it; or
 - (ii) it needs to be varied or to be superseded by a new undertaking under that section; and
 - (c) whether an order made under section 161C is no longer appropriate and needs to be varied or revoked. 10
- (4) The CMA must, within the implementation trial period, give the Secretary of State such advice as it considers appropriate in relation to –
- (a) any possible variation or release by the Secretary of State of an undertaking accepted by the Secretary of State under section 161C; 15
 - (b) any possible new undertaking to be accepted by the Secretary of State under that section so as to supersede another undertaking given to the Secretary of State under that section; 20
 - (c) any possible variation or revocation by the Secretary of State of an order made by the Secretary of State under that section;
 - (d) any possible undertaking to be accepted by the Secretary of State under that section instead of an order made under that section, or any possible order to be made by the Secretary of State under that section instead of an undertaking accepted under that section. 25
- (5) The relevant authority must, within the implementation trial period, take such action as it considers appropriate in relation to –
- (a) any possible variation or release by the relevant authority of an undertaking accepted by it under section 161C; 30
 - (b) any possible new undertaking to be accepted by the relevant authority under that section so as to supersede another undertaking given to it under that section;
 - (c) any possible variation or revocation by the relevant authority of an order made by it under that section; 35
 - (d) any possible undertaking to be accepted by the relevant authority under that section instead of an order made under that section, or any possible order to be made by the relevant authority under that section instead of an undertaking accepted under that section. 40
- (6) But the relevant authority may not do anything under this section that would result in –
- (a) the implementation trial period being extended;

- (b) an order or undertaking made under section 161C being out of compliance with any provision of that section.
- (7) In this section “relevant authority” has the meaning given by section 161B(2).
- (8) Subsections (3), (5) and (6) of section 138 apply to action taken by the CMA under this section as those subsections apply to action taken by the CMA under section 138(2). 5
- (9) Subsections (3)(b), (5) and (6) of section 147 apply to action taken by the Secretary of State under this section in respect of a restricted PI reference as those subsections apply to action taken by the Secretary of State under section 147(2). 10
- (10) Subsection (3) of section 147A applies to action taken by the Secretary of State under this section in respect of a full PI reference as that subsection applies to action taken by the Secretary of State under section 147A(2).” 15
- 6 In section 165 (procedural requirements for certain undertakings and orders: Part 4) –
- (a) after “section 159” insert “or 161C”;
- (b) for “or 161” substitute “, 161 or 161C”;
- 7 (1) Section 167 (rights to enforce undertakings and orders under Part 4) is amended as follows. 20
- (2) In subsection (1) –
- (a) the words from “any” to the end become paragraph (a);
- (b) after that paragraph insert “;
- (b) any undertaking accepted, or order made, under section 161C.” 25
- (3) In subsection (5), for “enforcement undertaking or enforcement order” substitute “undertaking or order to which this section applies”.
- (4) In subsection (6), for “enforcement undertaking or an enforcement order” substitute “undertaking or order to which this section applies”. 30
- (5) In subsection (9), for “enforcement undertaking or an enforcement order” substitute “undertaking or order to which this section applies”.
- 8 (1) Section 167A (enforcement of enforcement undertakings and orders: imposition of penalties) (inserted by paragraph 17 of Schedule 9) is amended as follows. 35
- (2) In the heading, after “orders” insert “etc”.
- (3) In subsection (1) –
- (a) the words “an enforcement undertaking or enforcement order” become paragraph (a);

- (b) after that paragraph insert “;
- (b) any undertaking accepted, or order made, under section 161C.”
- 9 (1) In section 167B (penalties under section 167A: amount) (inserted by paragraph 17 of Schedule 9), subsection (5)(b) is amended as follows. 5
- (2) The words “the enforcement undertaking or enforcement order” become sub-paragraph (i).
- (3) After that sub-paragraph insert “, or
- “(ii) the undertaking accepted, or order made, under section 161C.” 10
- 10 (1) In section 169 (certain duties of relevant authorities to consult: Part 4), in subsection (6), paragraph (a) of the definition of “relevant decision” is amended as follows.
- (2) Omit the “and” at the end of sub-paragraph (iii).
- (3) after that sub-paragraph insert – 15
- “(iv) to accept undertakings or make orders under section 161C; and”.
- 11 In section 172 (further publicity requirements: Part 4), in subsection (2), after paragraph (zb) insert –
- “(zc) any decision made by it under section 138A(A1)(b) that it is not reasonably practicable for the CMA to discharge its duty under section 138(2) in accordance with section 138A(1);” 20

SCHEDULE 8

Section 136(1)

CIVIL PENALTIES ETC IN CONNECTION WITH COMPETITION INVESTIGATIONS

PART 1

25

INVESTIGATIONS UNDER PART 1 OF CA 1998 (COMPETITION)

- 1 In Part 1 of CA 1998 (competition), Chapter 3 (investigation and enforcement) is amended as follows.
- 2 (1) In section 26 (investigations: powers to require documents and information), subsection (3) is amended as follows. 30
- (2) In the words before paragraph (a) omit “indicate”.
- (3) In paragraph (a), at the beginning insert “indicate”.
- (4) For paragraph (b) substitute –
- “(b) include information about the possible consequences of failing to comply with the notice.” 35

- 3 (1) In section 26A (investigations: power to ask questions), subsection (5) is amended as follows.
- (2) In the words before paragraph (a) omit “indicate”.
- (3) In paragraph (a), at the beginning insert “indicate”.
- (4) For paragraph (b) substitute – 5
- “(b) include information about the possible consequences of failing to comply with the notice.”
- 4 In section 27 (power to enter business premises without a warrant), in subsection (2), for paragraph (c) substitute –
- “(c) includes information about the possible consequences of failing to comply with the notice.” 10
- 5 (1) In section 29 (entry of premises under warrant: supplementary), subsection (1) is amended as follows.
- (2) In the words before paragraph (a) omit “indicate”.
- (3) In paragraph (a), at the beginning insert “indicate”. 15
- (4) For paragraph (b) substitute –
- “(b) include information about the possible consequences of failing to comply with the notice.”
- 6 (1) In section 40ZD (information relating to transferred EU anti-trust commitments and transferred EU anti-trust directions), subsection (3) is amended as follows. 20
- (2) The words from “indicates the subject matter” to the end become paragraph (a).
- (3) After that paragraph insert “, and
- (b) includes information about the possible consequences of failing to comply with the notice.” 25
- 7 For the italic heading before section 40A substitute –
- “Civil sanctions: failure to comply with investigative requirements”*
- 8 Before section 40A (but after the italic heading substituted by paragraph 7) insert – 30
- “40ZE Enforcement of requirements: imposition of penalties**
- (1) The CMA may impose a penalty on a person in accordance with section 40A where the CMA considers that –
- (a) the person has, without reasonable excuse, failed to comply with a requirement imposed on the person under section 26, 26A, 27, 28, 28A or 40ZD; 35
- (b) the person has, without reasonable excuse, obstructed an officer acting in the exercise of the officer’s powers under

- section 27 or under a warrant issued under section 28 or 28A;
- (c) the person, having been required to produce a document under section 26, 27, 28 or 28A, has, without reasonable excuse – 5
- (i) destroyed or otherwise disposed of, falsified or concealed the document, or
- (ii) caused or permitted the document’s destruction, disposal, falsification or concealment;
- (d) the person has, without reasonable excuse, provided information that was false or misleading in a material particular to the CMA in connection with any function of the CMA under this Part; 10
- (e) the person has, without reasonable excuse, provided information that was false or misleading in a material particular to another person knowing that the information was to be used for the purpose of providing information to the CMA in connection with any function of the CMA under this Part. 15
- (2) But the CMA may not proceed against a person under this section in relation to an act or omission which constitutes an offence under any of sections 42 to 44 if the person has, by reason of that act or omission, been found guilty of that offence. 20
- (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 40B at the time when the act or omission concerned occurred. 25
- (4) In this section –
- (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; 30
- (b) the reference to concealing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (5) *Sections 112 to 115 of the Enterprise Act 2002 (supplementary provisions about penalties) apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty imposed under section 110(1) or (1A) of that Act, with the following modifications –* 35
- (a) *any reference in those provisions to the appropriate authority is to be read as a reference to the CMA only;* 40
- (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 40B of the 1998 Act at the time when the act or omission concerned occurred.”” 5
- 9 (1) Section 40A (penalties: failure to comply with requirements) is amended as follows.
- (2) In the heading, for “failure to comply with requirements” substitute “amount”. 10
- (3) For subsection (1) substitute –
- “(1A) A penalty imposed under section 40ZE(1) is to be of such amount as the CMA considers appropriate.”
- (4) In subsection (2), for the words before paragraph (a), substitute “A penalty imposed under section 40ZE(1)(a) may be –”. 15
- (5) After subsection (2) insert –
- “(2A) A penalty imposed under any of section 40ZE(1)(b) to (e) must be a fixed amount.”
- (6) In subsection (3) –
- (a) for the words before paragraph (a) substitute “A penalty imposed under section 40ZE(1) on a person who is not an undertaking must not –”; 20
- (b) in paragraph (a), for “such amount as the Secretary of State may by order specify” substitute “£30,000”;
- (c) in paragraph (b), for “such amount per day as the Secretary of State may so specify” substitute “£15,000 per day”; 25
- (d) in paragraph (c) omit “as the Secretary of State may so specify”.
- (7) After subsection (3) insert –
- “(3A) A penalty imposed under section 40ZE(1) on a person who is an undertaking must not – 30
- (a) in the case of a fixed amount, exceed 1% of the turnover of the undertaking;
- (b) in the case of an amount calculated by reference to a daily rate, exceed 5% 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.” 35
- (8) Omit subsections (4) and (5).
- (9) In subsection (6), in paragraph (a) –
- (a) for “notice under section 112” substitute “provisional penalty notice under section 112(A1)”; 40

- (b) for “subsection (9)” substitute “section 40ZE(5)”.
- (10) After subsection (7) insert –
- “(7A) 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.” 5
- (11) In subsection (8), for “an order under subsection (3)” substitute “regulations under subsection (7A)”.
- (12) Omit subsection (9).
- (13) At the end insert – 10
- “(10) The Secretary of State may by regulations make provision for determining the turnover and daily turnover of an undertaking for the purposes of this section.
- (11) Regulations under subsection (10) may, in particular, make provision as to – 15
- (a) the amounts which are, or which are not, to be treated as 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.
- (12) Regulations under subsection (10) 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 (11)).” 20
- 10 (1) Section 40B (statement of policy on penalties) is amended as follows.
- (2) In subsection (1) – 25
- (a) for “use of its powers” substitute “exercise of functions”;
- (b) for “40A” substitute “40ZE”.
- (3) In subsection (2), for “40A” substitute “40ZE”.
- (4) In subsection (4), for “such persons” substitute “the Secretary of State and such other persons”. 30
- (5) After subsection (5) insert –
- “(5A) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.”
- (6) Omit subsection (6).
- 11 (1) Section 42 (offences) is amended as follows. 35
- (2) For the heading substitute “Obstruction”.

- (3) After subsection (7) insert –
- “(8) A person is not guilty of an offence under subsection (5) or (7) by reason of any act or omission in relation to which the CMA has proceeded against the person under section 40ZE(1).”
- 12 In section 43 (destroying or falsifying documents), after subsection (1) insert – 5
- “(1A) A person is not guilty of an offence under subsection (1) by reason of any act or omission in relation to which the CMA has proceeded against the person under section 40ZE(1).”
- 13 In section 44 (false or misleading information), after subsection (2) insert – 10
- “(2A) A person is not guilty of an offence under this section by reason of any act or omission in relation to which the CMA has proceeded against the person under section 40ZE(1).”

PART 2

INVESTIGATIONS UNDER PART 3 OF EA 2002 (MERGERS) 15

- 14 In Part 3 of EA 2002 (mergers), Chapter 5 (supplementary: investigation powers) is amended as follows.
- 15 (1) Section 110 (enforcement of powers under section 109: general) is amended as follows.
- (2) In the heading, for “general” substitute “imposition of penalties”. 20
- (3) For subsection (1) substitute –
- “(1) The CMA may impose a penalty on a person in accordance with section 111 where the CMA considers that –
- (a) the person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109; 25
- (b) the person has, without reasonable excuse, obstructed or delayed another person in the exercise of the other person’s powers under section 109(6);
- (c) the person has, without reasonable excuse, altered, suppressed or destroyed any document which the person has been required to produce by a notice under section 109. 30
- (1A) The appropriate authority may impose a penalty on a person in accordance with section 111 where the authority considers that –
- (a) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to the authority in connection with any of the authority’s functions under this Part; 35
- (b) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to another person knowing that the information was to be 40

used for the purpose of supplying information to the authority in connection with any function of the authority under this Part.

- (1B) In this section, and in sections 111 to 117, “the appropriate authority” means – 5
- (a) the CMA;
 - (b) the Secretary of State;
 - (c) OFCOM.
- (1C) But the appropriate authority may not proceed against a person under this section in relation to an act or omission which constitutes an offence under section 116A or 117 if the person has, by reason of that act or omission, been found guilty of that offence.”. 10
- (4) In subsection (2), for “subsection (1)” substitute “subsection (1)(a)”.
- (5) Omit subsections (3) to (8).
- (6) For subsection (9) substitute – 15
- “(9) In deciding whether and, if so, how to proceed under subsection (1) or (1A) or section 39(4) or 51(4) (including that enactment as applied by section 65(3)) –
- (a) the CMA must have regard to the statement of policy which was most recently published under section 116 at the time when the act or omission concerned occurred; 20
 - (b) OFCOM must have regard to the statement of policy which was most recently published under section 392 of the Communications Act 2003 (penalties imposed by OFCOM) at the time when the act or omission concerned occurred.” 25
- 16 (1) Section 110A (restriction on powers to impose penalties under section 110) is amended as follows.
- (2) In subsection (1) –
- (a) for “110(1) or (3)” substitute “110(1)(a) or (b)”;
 - (b) for “4” substitute “ten”. 30
- (3) In subsection (2), for “the failure or (as the case may be) the obstruction or delay” substitute “the act or omission giving rise to the penalty”.
- 17 (1) Section 111 (penalties) is amended as follows.
- (2) In the heading, at the end insert “: amount”.
- (3) In subsection (1) – 35
- (a) for “(3)” substitute “(1A)”;
 - (b) for “the CMA” substitute “the appropriate authority”.
- (4) In subsection (2) for “110(1)” substitute “110(1)(a)”.
- (5) In subsection (3), for “section 110(3)” substitute “any of section 110(1)(b), (c) or (1A)”.
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- (6) In subsection (4) –
- (a) for the words before paragraph (a) substitute “A penalty imposed under section 110(1) or (1A) on a person who does not own or control an enterprise must not – ”;
 - (b) in paragraph (a), for “such amount as the Secretary of State may by order specify” substitute “£30,000”; 5
 - (c) in paragraph (b), for “such amount per day as the Secretary of State may so specify” substitute “£15,000 per day”;
 - (d) in paragraph (c) omit “as the Secretary of State may so specify”.
- (7) After subsection (4) insert – 10
- “(4A) A penalty imposed under section 110(1) or (1A) on any other person must not –
- (a) in the case of a fixed amount, exceed 1% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person; 15
 - (b) in the case of an amount calculated by reference to a daily rate, 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;
 - (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.” 20
- (8) In subsection (5), in paragraph (a) –
- (a) for “notice under section 112” substitute “provisional penalty notice under section 112(A1)”; 25
 - (b) in paragraph (b), in the words before sub-paragraph (i), for “the CMA” substitute “the appropriate authority”.
- (9) Omit subsections (6) and (7).
- (10) Before subsection (8) insert –
- “(7A) The Secretary of State may by regulations amend subsection (4)(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.” 30
- (11) In subsection (8) –
- (a) for “an order under subsection (4) or (6)” substitute “regulations under subsection (7A)”; 35
 - (b) after “the CMA” insert “, OFCOM”.
- (12) After subsection (8) insert –
- “(9) The Secretary of State may by regulations make provision for determining, for the purposes of this section – 40
- (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; 5*
- (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)).” 10*
- 18 (1) Section 112 (penalties: main procedural requirements) is amended as follows.
- (2) Before subsection (1) insert –
- “(A1) Before the appropriate authority imposes a penalty under section 110(1) or (1A), the authority must give the person concerned a provisional penalty notice. 15
- (A2) A provisional penalty notice must –
- (a) contain a draft of the final penalty notice the appropriate authority is minded to give to the person under subsection (1), 20*
- (b) invite the making of representations by the person to the authority about the proposed final penalty notice, and*
- (c) specify the means by which, and the time by which, such representations must be made. 25*
- (A3) The appropriate authority must have regard to any representations received in accordance with a provisional penalty notice before imposing a penalty under section 110(1) or (1A) (and accordingly may not impose such a penalty before the time for the person concerned to make representations to the authority in accordance with that notice has expired).” 30
- (3) In subsection (1) –
- (a) for “(3)” substitute “(1A)”;*
- (b) for “the CMA shall give notice of the penalty” substitute “the appropriate authority must give the person concerned a final penalty notice”. 35*
- (4) In subsection (2) –
- (a) in the words before paragraph (a), after “The” insert “final penalty”;*
- (b) in paragraph (a), for “the CMA” substitute “the appropriate authority”; 40*

- (c) in paragraph (d), for “failure (or as the case may be) the obstruction or delay which the CMA” substitute “act or omission in question which the appropriate authority”;
 - (d) in paragraph (e), for “the CMA” substitute “the appropriate authority”; 5
 - (e) in paragraph (f), for “the CMA” substitute “the appropriate authority”.
- (5) In subsection (3), for “the CMA” substitute “the appropriate authority”.
- (6) After subsection (3) insert –
 - “(3A) A provisional penalty notice is given by serving a copy of the notice on the person on whom the appropriate authority is minded to impose the penalty.” 10
- (7) In subsection (4), in the words before paragraph (a), for “notice under this section” substitute “final penalty notice”.
- 19 (1) Section 113 (payment and interest by instalments) is amended as follows. 15
 - (2) In subsection (3), for “the CMA” substitute “the appropriate authority”.
 - (3) In subsection (4), for “the CMA” substitute “the appropriate authority”.
- 20 (1) Section 114 (appeals in relation to penalties) is amended as follows.
 - (2) In subsection (1), for “(3)” substitute “(1A)”
 - (3) In subsection (4), in the words before paragraph (a), for “the CMA” substitute “the appropriate authority”. 20
 - (4) In subsection (5), in paragraph (c), for “the CMA” substitute “the appropriate authority”.
 - (5) After subsection (5) insert –
 - “(5A) In the case of a penalty imposed on a person by the CMA or OFCOM, in considering what is appropriate for the purposes of subsection (5) the Competition Appeal Tribunal must have regard to the relevant guidance.” 25
 - (6) In subsection (7), in paragraph (b), for “the CMA” substitute “the appropriate authority”. 30
 - (7) In subsection (12) –
 - (a) the words from ““the appropriate court”” to the end become paragraph (a);
 - (b) after that paragraph insert –
 - “(b) “the relevant guidance” means – 35
 - (i) in the case of a penalty imposed on a person by the CMA, the statement of policy which was most recently published under section 116 at the time when the act or omission concerned occurred; 40

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- (ii) in the case of a penalty imposed on a person by OFCOM, the statement of policy which was most recently published under section 392 of the Communications Act 2003 (penalties imposed by OFCOM) at the time when the act or omission concerned occurred.”
- 21 (1) Section 115 (recovery of penalties) is amended as follows.
- (2) In the words before paragraph (a), for “(3)” substitute “(1A)”.
- (3) In the words after paragraph (b), for “the CMA” in both places it occurs substitute “the appropriate authority”.
- 22 (1) Section 116 (statement of policy) is amended as follows.
- (2) For subsection (1) substitute –
- “ (1) The CMA must prepare and publish a statement of policy in relation to –
- (a) the imposition of penalties under section 110, and
- (b) the enforcement of notices under section 109.”
- (3) In subsection (2), for “(3)” substitute “(1A)”.
- (4) In subsection (4), for “such” substitute “the Secretary of State and such other”.
- (5) After subsection (4) insert –
- “ (5) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.”
- 23 After section 116 insert –
- “116A Intentional destruction etc of documents**
- (1) A person (“P”) commits an offence if the person intentionally alters, suppresses or destroys any document which P has been required to produce by a notice under section 109.
- (2) But P does not commit an offence under subsection (1) by reason of any act or omission if the CMA has proceeded against P under section 110(1) or (1A) in relation to that act or omission.
- (3) A person who commits an offence under subsection (1) is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In this section –
- (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form;

- (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.”

- 24 (1) Section 117 (false or misleading information) is amended as follows.
- (2) In sub-paragraph (1), in paragraph (a) for “the CMA, OFCOM or the Secretary of State” substitute “the appropriate authority”. 5
 - (3) In sub-paragraph (2), in the words after paragraph (b), for “the CMA, OFCOM or the Secretary of State” substitute “the appropriate authority”.
 - (4) After subsection (2) insert –
“(2A) A person does not commit an offence under subsection (1) or (2) by reason of any act or omission if the appropriate authority has proceeded against the person under section 110(1) or (1A) in relation to that act or omission.” 10

PART 3

INVESTIGATIONS UNDER PART 4 OF EA 2002 (MARKET STUDIES AND MARKET INVESTIGATIONS) 15

- 25 In Part 4 of EA 2002 (market studies and market investigations), Chapter 4 (supplementary: investigation powers) is amended as follows.
- 26 (1) Section 174A (enforcement of powers under section 174: general) is amended as follows. 20
- (2) In the heading, for “general” substitute “imposition of penalties”.
 - (3) For subsection (1) substitute –
“(1) The CMA may impose a penalty on a person in accordance with section 174D where the CMA considers that –
(a) the person has, without reasonable excuse, failed to comply with any requirement of a notice under section 174; 25
(b) the person has, without reasonable excuse, obstructed or delayed another person in the exercise of the other person’s powers under section 174(7);
(c) the person has, without reasonable excuse, intentionally altered, suppressed or destroyed any document which the person has been required to produce by a notice under section 174. 30
- (1A) The relevant authority may impose a penalty on a person in accordance with section 174D where the authority considers that – 35
- (a) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to the authority in connection with any of the authority’s functions under this Part;

- (b) the person has, without reasonable excuse, supplied information that is false or misleading in a material respect to another person knowing that the information was to be used for the purpose of supplying information to the authority in connection with any function of the authority under this Part. 5
- (1B) In this section, and in sections 174B to 174D, “the relevant authority” means –
- (a) the CMA;
 - (b) the Secretary of State; 10
 - (c) the appropriate Minister (so far as the Minister is not the Secretary of State acting alone).
- (1C) But the relevant authority may not proceed against a person under this section in relation to an act or omission which constitutes an offence under section 116A or 117 as applied by section 180 if the person has, by reason of that act or omission, been found guilty of that offence.” 15
- (4) In subsection (2), for “subsection (1)” substitute “subsection (1)(a)”.
- (5) Omit subsections (3) to (7).
- (6) In subsection (8) – 20
- (a) for “(3)” substitute “(1A)”;
 - (b) for “failure concerned or (as the case may be) the obstruction or delay” substitute “act or omission”.
- (7) After subsection (9) insert –
- “(10) *Sections 112 to 115 apply in relation to a penalty imposed under section 174A(1) or (1A) as they apply in relation to a penalty imposed under section 110(1) or (1A), with the following modifications –* 25
- (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;* 30
 - (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 174E at the time when the act or omission concerned occurred.”*” 35
- 27 (1) Section 174B (restriction on powers to impose penalties under section 174A) is amended as follows. 40
- (2) In subsection (1) –
- (a) for “174A(1) or (3)” substitute “174A(1)(a) or (b)”;

- (b) for “4” substitute “ten”.
- (3) In subsection (2), for “the failure or (as the case may be) the obstruction or delay” substitute “the act or omission giving rise to the penalty”.
- 28 (1) Section 174D (penalties) is amended as follows.
 - (2) In the heading, at the end insert “: amount”. 5
 - (3) In subsection (1) –
 - (a) for “(3)” substitute “(1A)”;
 - (b) for “the CMA” insert “the relevant authority”.
 - (4) In subsection (2), in the words before paragraph (a), for “174A(1)” substitute “174A(1)(a)”. 10
 - (5) In subsection (3), for “section 174A(3)” substitute “any of section 174A(1)(b), (c) or (1A)”.
 - (6) In subsection (4) –
 - (a) for the words before paragraph (a) substitute “A penalty imposed under section 174A(1) or (1A) on a person who does not own or control an enterprise must not –”; 15
 - (b) in paragraph (a), for “such amount as the Secretary of State may by order specify” substitute “£30,000”;
 - (c) in paragraph (b), for “such amount per day as the Secretary of State may so specify” substitute “£15,000 per day”; 20
 - (d) in paragraph (c) omit “as the Secretary of State may so specify”.
 - (7) After subsection (4) insert –
 - “(4A) A penalty imposed under section 174A(1) or (1A) on any other person must not –
 - (a) in the case of a fixed amount, exceed 1% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person; 25
 - (b) in the case of an amount calculated by reference to a daily rate, 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; 30
 - (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.”
 - (8) Omit subsections (5) and (6). 35
 - (9) Before subsection (7) insert –
 - “(6A) The Secretary of State may by regulations amend subsection (4)(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.” 40

- (10) In subsection (7), in the words before paragraph (a), for “an order under subsection (4) or (5)” substitute “regulations under subsection (6A)”.
- (11) In subsection (8), in paragraph (a) –
- (a) for “notice under section 112” substitute “provisional penalty notice under section 112(A1)”; 5
 - (b) for “subsection (10)” substitute “section 174A(10)”.
- (12) Omit subsection (10).
- (13) After subsection (10) insert –
- “(11) The Secretary of State may by regulations make provision for determining, for the purposes of this section – 10
- (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.
- (12) Regulations under subsection (11)(b) may, in particular, make provision as to – 15
- (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. 20
- (13) Regulations under subsection (11) 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 (12)).”
- 29 (1) Section 174E (statement of policy on penalties) is amended as follows. 25
- (2) For subsection (1) substitute –
- “(1) The CMA must prepare and publish a statement of policy in relation to –
- (a) the imposition of penalties under section 174A, and
 - (b) the enforcement of notices under section 174.” 30
- (3) In subsection (2), for “(3)” substitute “(1A)”.
- (4) In subsection (4), for “such” substitute “the Secretary of State and such other”.
- (5) After subsection (4) insert –
- “(5) A statement or revised statement of policy may not be published under this section without the approval of the Secretary of State.” 35
- 30 In section 179 (review of decisions under Part 4), in subsection (2), in paragraph (a), for “(3)” substitute “(1A)”.
- 31 (1) Section 180 (offences) is amended as follows.

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- 4 In the italic heading before section 32, at the end insert “: directions and interim measures”.
- 5 In section 34 (enforcement of directions), after subsection (3) insert—
- “(4) 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 35C at the time of the failure to comply with the direction.” 5
- 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** 10
- (1) The CMA may impose a penalty on a person in accordance with section 35B where the CMA considers that—
- (a) a person from whom the CMA has accepted commitments under section 31A has, without reasonable excuse, failed to adhere to the commitments (and has not been released from them); 15
- (b) a person has, without reasonable excuse, failed to comply with a direction under section 32, 33 or 35.
- (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. 20
- 35B Penalties under section 35A: amount**
- (1) A penalty under section 35A(1) is to be such amount as the CMA considers appropriate. 25
- (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. 30
- (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; 35
- (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, exceed 5% of the total value of the daily turnover of the undertaking; 5
 - (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. 10
- (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 15
 - (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). 20
- (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; 25
 - (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 – 30
 - “(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.” 35
- (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 – 40
- (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— 5
- (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)). 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 15

- (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). 20
- (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. 25
- (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. 30

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

PART 2

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

- 7 In Part 3 of EA 2002 (mergers), Chapter 4 (enforcement) is amended as follows. 35

- 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”.
- 9 (1) Section 89 (subject-matter of undertakings) is amended as follows. 5
- (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.” 10
- (4) After subsection (2) insert –
- “(3) In this section, “appropriate authority” has the same meaning as in section 94AA.”
- 10 In section 94 (rights to enforce undertakings and orders), after subsection (9) insert – 15
- “(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.” 20
- 11 For section 94A substitute –
- “94AA Enforcement of undertakings and orders: imposition of penalties**
- (1) The appropriate authority may impose a penalty on a person in accordance with section 94AB where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an enforcement undertaking or enforcement order. 25
- (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; 30
- (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. 35

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—
- (a) a fixed amount, 5
 - (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— 10
- (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;
 - (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. 15
- (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; 20
 - (b) in the case of an amount calculated by reference to a daily rate, 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; 25
 - (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— 30
- (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. 35
- (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—* 40

- (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; 5
 - (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.” 10
 - (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. 15
 - (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. 20
 - (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. 25
 - (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; 30
 - (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)).” 35
- 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”. 40
 - (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
- (5) Omit subsection (6).

PART 3

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

- 13 In Part 4 of EA 2002 (market studies and market investigations), Chapter 3 (enforcement) is amended as follows. 10
- 14 (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”. 15
- 15 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. 20
 - (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.” 25
- 16 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.” 30
- 17 After section 167 insert –
- “167A Enforcement of undertakings and orders: imposition of penalties**
- (1) The relevant authority may impose a penalty on a person in accordance with section 167B where the relevant authority considers that a person has, without reasonable excuse, failed to comply with an enforcement undertaking or enforcement order. 35

- (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. 5

167B Penalties under section 167A: amount

- (1) A penalty under section 167A(1) is to be such amount as the relevant authority considers appropriate. 10
- (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. 15
- (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; 20
 - (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; 30
 - (b) in the case of an amount calculated by reference to a daily rate, 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. 35
- (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 40

- (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. 5
- (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)); 10
- (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 – 15
- “(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. 20
- (8) Before making regulations under subsection (7) the Secretary of State must consult – 25
- (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 – 30
- (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 – 35
- (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. 40
- (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. 5
- (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.
- (3) The CMA may revise its statement of policy and, where it does so, it must publish the revised statement. 10
- (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.” 15

SCHEDULE 10

Section 136(3)

CIVIL PENALTIES: AMENDMENTS RELATING TO SECTORAL REGULATORS

The Civil Aviation Authority (CAA)

- 1 In the Civil Aviation Act 2012, Chapter 2 of Part 1 (regulation of operators of dominant airports: competition) is amended as follows. 20
- 2 (1) Section 60 (functions of the CAA under Part 4 of EA 2002) is amended as follows.
 - (2) In subsection (2), in the words before paragraph (a), after “166” insert “, 167C”. 25
 - (3) In subsection (3), in paragraph (a), after “166” insert “, 167C”.
- 3 In section 61 (functions of the CAA under Part 4 of EA 2002: supplementary), in subsection (8), for “or 171” substitute “, 167C, 171 or 174E”.
- 4 (1) Section 62 (functions of the CAA under CA 1998) is amended as follows. 30
 - (2) In subsection (2), in the words after paragraph (b), after “31D(1) to (6)” insert “, 35C”.
 - (3) In subsection (4), after “31D(1) to (6)” insert “, 35C”.
- 5 In section 63 (functions of the CAA under CA 1998: supplementary), in subsection (1), after “31D(1) to (6)” insert “, 35C”. 35

- 6 (1) Section 86 of the Transport Act 2000 (functions of the CAA with respect to competition) is amended as follows.
- (2) In subsection (2), in the words before paragraph (a), after “166” insert “, 167C”.
- (3) In subsection (3), in the words before paragraph (a), after “31D(1) to (6)” insert “, 35C”. 5
- (4) In subsection (4) –
- (a) in paragraph (a), after “166” insert “, 167C”;
- (b) in paragraph (b), after “31D(1) to (6)” insert “, 35C”.
- (5) In subsection (7), in paragraph (b), after “31D(1) to (6)” insert “, 35C”. 10

The Financial Conduct Authority (FCA)

- 7 The Financial Services and Markets Act 2000 is amended as follows.
- 8 (1) Section 234I (functions of the FCA under Part 4 of EA 2002) is amended as follows.
- (2) In the list in subsection (3) – 15
- (a) after the entry for section 166 of EA 2002 insert –
- “section 167C (statement of policy in relation to functions under sections 167 and 167A);”;
- (b) after the entry for section 171 of EA 2002 insert –
- “section 174E (statement of policy on penalties).” 20
- (3) In subsection (5), in paragraph (a) for “or 171” substitute “, 167C, 171 or 174E”.
- 9 (1) Section 234J (functions of the FCA under CA 1998) is amended as follows.
- (2) In subsection (3) after the entry for section 31D(1) to (6) of CA 98 insert –
- “section 35C (statement of policy in relation to functions under sections 31E, 34 and 35A);” 25
- (3) In subsection (5), in paragraph (a), after “31D(1) to (6)” insert “, 35C”.

The Northern Ireland Authority for Utility Regulation

- 10 (1) Article 29 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition) is amended as follows. 30
- (2) In paragraph (2), in the words before sub-paragraph (a), after “166” insert “, 167C”.
- (3) In paragraph (3), in the words before sub-paragraph (a) –
- (a) after “31D(1) to (6)” insert “, 35C”; 35
- (b) after “38(1) to (6)” insert “, 40B(1) to (4)”.
- (4) In paragraph (4), in sub-paragraph (a), after “166” insert “, 167C”.

- (5) In paragraph (5)–
(a) after “31D(1) to (6)” insert “, 35C”;
(b) after “38(1) to (6)” insert “, 40B(1) to (4)”.
- (6) In paragraph (9), in sub-paragraph (b)–
(a) after “31D(1) to (6)” insert “, 35C”; 5
(b) after “38(1) to (6)” insert “, 40B(1) to (4)”.
- (7) Omit paragraph (10).
- 11 (1) Article 23 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))
(functions of the Northern Ireland Authority for Utility Regulation with
respect to competition) is amended as follows. 10
- (2) In paragraph (2A), in the words before sub-paragraph (a), after “166” insert
“, 167C”.
- (3) In paragraph (2B), in sub-paragraph (a), after “166” insert “, 167C”.
- (4) In paragraph (3), in the words before sub-paragraph (a), after “31D(1) to
(6)” insert “, 35C”. 15
- (5) In paragraph (3A), after “31D(1) to (6)” insert “, 35C”.
- (6) In paragraph (6), in sub-paragraph (b), after “31D(1) to (6)” insert “, 35C”.
- (7) Omit paragraph (7).
- 12 (1) Article 46 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231
(N.I. 1)) (functions of the Northern Ireland Authority for Utility Regulation 20
with respect to competition) is amended as follows.
- (2) In paragraph (2A), in the words before sub-paragraph (a), after “166” insert
“, 167C”.
- (3) In paragraph (2B), in sub-paragraph (a), after “166” insert “, 167C”.
- (4) In paragraph (3), in the words before sub-paragraph (a), after “31D(1) to
(6)” insert “, 35C”. 25
- (5) In paragraph (3A), after “31D(1) to (6)” insert “, 35C”.
- (6) In paragraph (6), in sub-paragraph (b), after “31D(1) to (6)” insert “, 35C”.
- (7) Omit paragraph (6A).
- The Office of Communications (OFCOM)* 30
- 13 The Communications Act 2003 is amended as follows.
- 14 (1) Section 370 (functions of OFCOM under Part 4 of EA 2002) is amended as
follows.
- (2) In subsection (2), in the words before paragraph (a), after “166” insert “,
167C”. 35
- (3) In subsection (3), in paragraph (a), after “166” insert “, 167C”.
- (4) Omit subsection (10).

- 15 (1) Section 371 (functions of OFCOM under CA 1998) is amended as follows.
- (2) In subsection (2), in the words before paragraph (a), after “31D(1) to (6)” insert “, 35C”.
- (3) In subsection (3), in paragraph (a), after “31D(1) to (6)” insert “, 35C”.
- 16 (1) Section 392 (penalties imposed by OFCOM) is amended as follows. 5
- (2) In subsection (1), after “the Competition Act 1998 (c. 41)” insert “and Part 4 of the Enterprise Act 2002”.
- (3) In subsection (6), after “the Competition Act 1998 (c. 41)” insert “and Part 4 of the Enterprise Act 2002”.

The Office of Gas and Electricity Markets (Ofgem) 10

- 17 (1) Section 43 of the Electricity Act 1989 (functions of Ofgem with respect to competition) is amended as follows.
- (2) In subsection (2A), in the words before paragraph (a), after “166” insert “, 167C”.
- (3) In subsection (2B), in paragraph (a), after “166” insert “, 167C”. 15
- (4) In subsection (3), in the words before paragraph (a), after “31D(1) to (6)” insert “, 35C”.
- (5) In subsection (3A), after “31D(1) to (6)” insert “, 35C”.
- (6) In subsection (6), in paragraph (b), after “31D(1) to (6)” insert “, 35C”.
- (7) Omit subsection (6A). 20
- 18 (1) Section 36A of the Gas Act 1986 (functions of Ofgem with respect to competition) is amended as follows.
- (2) In subsection (2A), in the words before paragraph (a), after “166” insert “, 167C”.
- (3) In subsection (2B), in paragraph (a), after “166” insert “, 167C”. 25
- (4) In subsection (3), in the words before paragraph (a), after “31D(1) to (6)” insert “, 35C”.
- (5) In subsection (3A), after “31D(1) to (6)” insert “, 35C”.
- (6) In subsection (7), in paragraph (b), after “31D(1) to (6)” insert “, 35C”.
- (7) Omit subsection (8). 30

The Office of Rail and Road (ORR)

- 19 (1) Section 67 of the Railways Act 1993 (functions of the ORR with respect to competition) is amended as follows.
- (2) In subsection (2A), in the words before paragraph (a), after “166” insert “, 167C”. 35
- (3) In subsection (2B), in paragraph (a), after “166” insert “, 167C”.

- (4) In subsection (3), in the words before paragraph (a), after “31D(1) to (6)” insert “, 35C”.
- (5) In subsection (3A), after “31D(1) to (6)” insert “, 35C”.
- (6) In subsection (8), in paragraph (b), after “31D(1) to (6)” insert “, 35C”.
- (7) Omit subsection (9).

5

The Payment Systems Regulator

20 The Financial Services (Banking Reform) Act 2013 is amended as follows.

21 (1) Section 59 (functions of the Payment Systems Regulator under Part 4 of EA 2002) is amended as follows.

(2) In the list in subsection (3) –

10

(a) after the entry for section 166 of EA 2002 insert –

“section 167C (statement of policy in relation to functions under sections 167 and 167A);”;

(b) after the entry for section 171 of EA 2002 insert –

“section 174E (statement of policy on penalties).”

15

(3) In subsection (5), in paragraph (a), for “or 171” substitute “, 167C, 171 or 174E”.

22 (1) Section 61 (functions of the Payment Systems Regulator under CA 1998) is amended as follows.

(2) In subsection (3), after the entry for section 31D(1) to (6) of CA 98 insert –

20

“section 35C (statement of policy in relation to functions under sections 31E, 34 and 35A);”.

(3) In subsection (5), in paragraph (a), after “31D(1) to (6)” insert “, 35C”.

The Water Services Regulation Authority (Ofwat)

23 (1) Section 31 of the Water Industry Act 1991 (functions of Ofwat with respect to competition) is amended as follows.

25

(2) In subsection (2A), in the words before paragraph (a), after “166” insert “, 167C”.

(3) In subsection (3), in the words before paragraph (a), after “31D(1) to (6)” insert “, 35C”.

30

(4) In subsection (4), in paragraph (a), after “166” insert “, 167C”.

(5) In subsection (4A), after “31D(1) to (6)” insert “, 35C”.

(6) In subsection (8), in paragraph (b), after “31D(1) to (6)” insert “, 35C”.

(7) Omit subsection (8A).

SCHEDULE 11

Section 137

SERVICE AND EXTRA-TERRITORIALITY OF NOTICES UNDER CA 1998 AND EA 2002

Service of documents etc

- 1 In Part 3 of EA 2002 (mergers), in Chapter 5 (supplementary), for section 126 (service of documents) substitute— 5
- “126 Service of documents by the CMA, OFCOM or the Secretary of State**
- (1) This section applies in relation to any document required or authorised under this Part to be served on a person by the CMA, OFCOM or the Secretary of State. 10
- (2) The document may be served by—
- (a) delivering it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at that address, or
 - (d) sending it to the person by email to their email address. 15
- (3) A document may be served on a body corporate by giving it to any officer of that body.
- (4) A document may be served on a partnership by giving it to any partner or a person who has the control or management of the partnership business. 20
- (5) A document may be served on an unincorporated body or association (other than a partnership) by giving it to any member of the governing body of the association.
- (6) A person’s proper address is—
- (a) in a case where the person has specified an address as one at which the person, or someone acting on the person’s behalf, will accept service of documents, that address; 25
 - (b) in any other case, the address determined in accordance with subsection (7).
- (7) A person’s “proper address” is (if subsection (6)(a) does not apply)— 30
- (a) in the case of a body corporate, its registered or principal office;
 - (b) in the case of a partnership, the principal office of the partnership;
 - (c) in the case of an unincorporated body or association, the principal office of the body or association; 35
 - (d) in a case where none of paragraphs (a) to (c) apply, any address at which the CMA, OFCOM or the Secretary of State believes, on reasonable grounds, that the document will come to the attention of the person. 40

- (8) A person’s email address is –
- (a) any email address published for the time being by that person as an address for contacting that person, or
 - (b) if there is no such published address, any email address by means of which the CMA, OFCOM or the Secretary of State believes, on reasonable grounds, that the document will come to the attention of that person. 5
- (9) In the case of –
- (a) a body corporate registered outside the United Kingdom,
 - (b) a partnership carrying on business outside the United Kingdom, or 10
 - (c) any other body with offices outside the United Kingdom, references to its principal office include references to its principal office in the United Kingdom or, if it has no principal office in the United Kingdom, any place in the United Kingdom where it carries on business or conducts activities. 15
- (10) In this section “officer”, in relation to any body corporate, means a director, manager, secretary or other similar officer of the body.
- (11) This section does not limit any other lawful means of serving a document on a person.” 20
- 2 In Part 1 of CA 1998, in Chapter 3 (investigation and enforcement), after section 44 insert –
- “Supplementary*
- 44A Giving of notices under Chapter 3**
- Section 126 of the Enterprise Act 2002 (service of documents) applies to the giving of notices under this Chapter as it applies to the service of documents under Part 3 of that Act.” 25
- 3 In section 61(4) of the Financial Services (Banking Reform) Act 2013 (functions of the Payment Systems Regulator under CA 1998), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 30
- 4 In section 62(4) of the Civil Aviation Act 2012 (functions of the Civil Aviation Authority under CA 1998), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 35
- 5 In section 371(3) of the Communications Act 2002 (functions of OFCOM under CA 1998), in the words before paragraph (a), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”.

- 6 In section 86(4)(b) of the Transport Act 2000 (functions of the Civil Aviation Authority with respect to competition), after “and 54” insert “but including references in provisions of the Enterprise Act 2002 applied by that Part”.
- 7 In section 234J(4) of the Financial Services and Markets Act 2000 (functions of the FCA under CA 1998), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 5
- 8 In section 67(3A) of the Railways Act 1993 (functions of the Office of Rail and Road with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 10
- 9 In section 31(4A) of the Water Industry Act 1991 (functions of Ofwat with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 15
- 10 In section 43(3A) of the Electricity Act 1989 (functions of Ofgem with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”.
- 11 In section 36A(3A) of the Gas Act 1986 (functions of Ofgem with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 20
- 12 In Article 29(5) of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 25
- 13 In Article 23(3A) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 30
- 14 In Article 46(3A) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition), after “Part 1 of the Competition Act 1998” insert “(including references in provisions of the Enterprise Act 2002 applied by that Part)”. 35

Extra-territoriality of notices under CA 1998 and EA 2002

- 15 In Chapter 3 of Part 1 of CA 1998 (investigation and enforcement), after section 44A (inserted by paragraph 2) insert—
- “44B Extra-territorial application of notices under sections 26 and 40ZD** 40
- (1) This section applies to the exercise of the CMA’s power to give a person a notice under section 26 or 40ZD.

- (2) The power is exercisable so as to—
- (a) give the notice to a person who is outside the United Kingdom (subject to subsections (3) and (4));
 - (b) require the production of a specified document, or the provision of specified information, held outside the United Kingdom. 5
- (3) The CMA’s power to give a notice under section 26 to a person outside the United Kingdom by virtue of subsection (2)(a) is exercisable only if—
- (a) the person’s activities are being investigated as part of an investigation under section 25, or 10
 - (b) the person has a UK connection.
- (4) The CMA’s power to give a notice under section 40ZD to a person outside the United Kingdom by virtue of subsection (2)(a) is exercisable only if— 15
- (a) the person is bound by transferred EU anti-trust commitments (within the meaning of section 40ZA), or
 - (b) the person is subject to a transferred EU anti-trust direction (within the meaning of that section).
- (5) For the purposes of subsection (3)(b), a person has a UK connection if the person— 20
- (a) is a United Kingdom national;
 - (b) is an individual who is habitually resident in the United Kingdom;
 - (c) is a body incorporated under the law of any part of the United Kingdom; 25
 - (d) carries on business in the United Kingdom.
- (6) In subsection (5)(a) “United Kingdom national” means—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; 30
 - (b) a person who is a British subject under the British Nationality Act 1981;
 - (c) a British protected person within the meaning of that Act.
- (7) Nothing in this section is to be taken to limit any other power of the CMA to give a notice under section 26 or 40ZD to a person outside the United Kingdom.” 35
- 16 In Chapter 5 of Part 3 of EA 2002 (mergers: supplementary: investigation powers), after section 109A insert—
- “109B Extra-territorial application of notices under section 109**
- (1) This section applies to the exercise of the CMA’s power to give a person a notice under section 109(2) or (3). 40

- (2) The power is exercisable so as to—
- (a) give the notice to a person who is outside the United Kingdom (subject to subsection (3));
 - (b) require the production of documents, or the supply of information, held outside the United Kingdom. 5
- (3) The CMA’s power to give a notice under section 109(2) or (3) to a person outside the United Kingdom by virtue of subsection (2)(a) is exercisable only if—
- (a) the person is, or was, part of, or involved with or carrying on, an enterprise which has or may have ceased, or may cease, to be a distinct enterprise in circumstances where a reference has been, or may be, made under section 22, 33, 45 or 62 in relation to the enterprise, or 10
 - (b) the person has a UK connection.
- (4) For the purposes of subsection (3)(b), a person has a UK connection if the person— 15
- (a) is a United Kingdom national;
 - (b) is an individual who is habitually resident in the United Kingdom;
 - (c) is a body incorporated under the law of any part of the United Kingdom; 20
 - (d) carries on business in the United Kingdom.
- (5) Nothing in this section is to be taken to limit any other power of the CMA to give a notice under section 109(2) or (3) to a person outside the United Kingdom.” 25
- 17 In Chapter 4 of Part 4 of EA 2002 (market studies and market investigations: supplementary: investigation powers), after section 174 insert—
- “174ZA Extra-territorial application of notices under section 174**
- (1) This section applies to the exercise of the CMA’s power to give a person a notice under section 174(4) or (5). 30
- (2) The power is exercisable so as to—
- (a) give the notice to a person who is outside the United Kingdom (subject to subsection (3));
 - (b) require the production of documents, or the supply of information, held outside the United Kingdom. 35
- (3) The CMA’s power to give a notice under section 174(4) or (5) to a person outside the United Kingdom by virtue of subsection (2)(a) is exercisable only if the person—
- (a) is a United Kingdom national;
 - (b) is an individual who is habitually resident in the United Kingdom; 40

- (c) is a body incorporated under the law of any part of the United Kingdom;
- (d) carries on business in the United Kingdom.
- (4) In subsection (3)(a) “United Kingdom national” has the same meaning as in Part 3 (see section 129(1)).
- (5) Nothing in this section is to be taken to limit any other power of the CMA to give a notice under section 174(4) or (5) to a person outside the United Kingdom.”

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SCHEDULE 12

Section 138

ORDERS AND REGULATIONS UNDER CA 1998 AND EA 2002

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Orders and regulations under CA 1998

- 1 (1) In Part 4 of CA 1998 (supplemental and transitional), section 71 (regulations, orders and rules) is amended as follows.
 - (2) In subsection (4) –
 - (a) in the words before paragraph (a), for “No order is to be made” substitute “An order made”;
 - (b) for the words after paragraph (e) substitute “is subject to the affirmative procedure”.
 - (3) After subsection (4) insert –

“(4A) Regulations made under section 35B(7) or 40A(7A) are subject to the affirmative procedure.”
 - (4) In subsection (5) –
 - (a) in paragraph (a), after “(4)” insert “or (4A)”;
 - (b) for the words after paragraph (b) substitute “is subject to the negative procedure”.
 - (5) After subsection (5) insert –

“(6) Any provision that may be made by order or regulations under this Act subject to the negative procedure may instead be made by order or regulations subject to the affirmative procedure.

(7) Where orders or regulations under this Act are subject to “the affirmative procedure”, the orders or regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

(8) Where orders or regulations under this Act are subject to “the negative procedure”, the statutory instrument containing them is

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subject to annulment in pursuance of a resolution of either House of Parliament.”

Orders and regulations under Part 3 of EA 2002

- 2 (1) In Part 3 of EA 2002 (mergers), section 124 (orders and regulations under Part 3) is amended as follows. 5
- (2) In subsection (5)–
- (a) after “section 65(3),” insert “59(6A)(a),”;
- (b) for “shall be subject to annulment in pursuance of a resolution of either House of Parliament” substitute “is subject to the negative procedure”; 10
- (3) After subsection (5) insert –
- “(5A) Regulations made under section 111(9) are subject to the negative procedure.”
- (4) In subsection (6)–
- (a) for “No order shall be made” substitute “An order made”; 15
- (b) for “section 59(6A)” substitute “section 59(6A)(b)”;
- (c) for “unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament” substitute “is subject to the affirmative procedure”.
- (5) After subsection (6) insert – 20
- “(6A) Regulations made under section 94AB(7) or 111(7A) are subject to the affirmative procedure.
- (6B) Any provision that may be made by order or regulations under this Part subject to the negative procedure may instead be made by order or regulations subject to the affirmative procedure.” 25
- (6) After subsection (10) insert –
- “(11) Where orders or regulations under this Part are subject to “the affirmative procedure”, the orders or regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament. 30
- (12) Where orders or regulations under this Act are subject to “the negative procedure”, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.” 35

Orders and regulations under Part 4 of EA 2002

- 3 (1) In Part 4 of EA 2002 (market studies and market investigations), section 181 (orders under Part 4) is amended as follows.
- (2) In the heading, after “Orders” insert “and regulations”.

- (3) In subsection (1), after “order” insert “or regulations”.
- (4) In subsection (2), after “order” insert “or regulations”.
- (5) In subsection (4) –
 - (a) omit “174D(4) or (5)”;
 - (b) for “section 174D” substitute “section 174A(10)”;
 - (c) for “shall be subject to annulment in pursuance of a resolution of either House of Parliament” substitute “is subject to the negative procedure”.
- (6) After subsection (4) insert –
 - “(4A) Regulations made under section 174D(11) are subject to the negative procedure.”
- (7) In subsection (5) –
 - (a) for “No order shall be made” substitute “An order made”;
 - (b) for “unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament” substitute “is subject to the affirmative procedure”.
- (8) After subsection (5) –
 - “(5A) Regulations made under paragraph (b) of the definition of “qualifying remedial action” in section 161B(3), or under section 167B(7) or 174D(6A), are subject to the affirmative procedure.
 - (5B) Any provision that may be made by order or regulations under this Part subject to the negative procedure may instead be made by order or regulations subject to the affirmative procedure.”
- (9) After subsection (10) insert –
 - “(11) Where orders or regulations under this Part are subject to “the affirmative procedure”, the orders or regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
 - (12) Where orders or regulations under this Act are subject to “the negative procedure”, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.”

SCHEDULE 13

Section 142

CONSUMER PROTECTION ENACTMENTS

PART 1

ENACTMENTS

Enactment	Authorised enforcers	Information about transitional etc provision	5
1. Acts of Parliament			
Accommodation Agencies Act 1953	(1) All public designated enforcers, other than—		10
	(a) the Department of Health in Northern Ireland;		
	(b) the Department for Infrastructure in Northern Ireland;		15
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);		20
	(d) the Maritime and Coastguard Agency;		
	(e) the Office for the Traffic Commissioner;		25
	(f) the Secretary of State.		
	(2) All private designated enforcers.		
Section 40 of the Administration of Justice Act 1970	(1) All public designated enforcers, other than—		30
	(a) the Department of Health in Northern Ireland;		
	(b) the Department for Infrastructure in Northern Ireland;		35
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);		40

Enactment	Authorised enforcers	Information about transitional etc provision
	<ul style="list-style-type: none"> (d) the Maritime and Coastguard Agency; (e) the Office for the Traffic Commissioner; (f) the Secretary of State. 	5
	(2) All private designated enforcers.	10
Sections 4, 5 and 7 of the Cancer Act 1939	(1) All public designated enforcers, other than— <ul style="list-style-type: none"> (a) the Department of Health in Northern Ireland; (b) the Department for Infrastructure in Northern Ireland; (c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services); (d) the Maritime and Coastguard Agency; (e) the Office for the Traffic Commissioner; (f) the Secretary of State. 	15
	(2) All private designated enforcers.	20
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Sections 60, 61 and 63 of the Charities Act 1992	(1) All public designated enforcers, other than— <ul style="list-style-type: none"> (a) the Department of Health in Northern Ireland; (b) the Department for Infrastructure in Northern Ireland; (c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services); (d) the Maritime and Coastguard Agency; (e) the Office for the Traffic Commissioner; 	30
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Enactment	Authorised enforcers	Information about transitional etc provision
	(f) the Secretary of State.	
	(2) All private designated enforcers.	5
Section 7(1) and (2) of the Children and Young Persons Act 1933	(1) All public designated enforcers, other than—	
	(a) the Department of Health in Northern Ireland;	10
	(b) the Department for Infrastructure in Northern Ireland;	
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	15
	(d) the Maritime and Coastguard Agency;	20
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	
	(2) All private designated enforcers.	25
Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991	(1) All public designated enforcers, other than—	In relation to Scotland, see Article 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Ancillary Provisions) Order 2010 (S.S.I. 2010/77) for provision about the application of the section in connection with its repeal
	(a) the Department of Health in Northern Ireland;	30
	(b) the Department for Infrastructure in Northern Ireland;	
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	35
	(d) the Maritime and Coastguard Agency;	40
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	
	(2) All private designated enforcers.	

Enactment	Authorised enforcers	Information about transitional etc provision
Sections 319, 321, 322, 325, 368F, 368G and 368H of the Communications Act 2003	(1) All public designated enforcers. (2) All private designated enforcers.	5
Part 41 of the Companies Act 2006	(1) All public designated enforcers, other than – (a) the Department of Health in Northern Ireland; (b) the Department for Infrastructure in Northern Ireland; (c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services); (d) the Maritime and Coastguard Agency; (e) the Office for the Traffic Commissioner; (f) the Secretary of State. (2) All private designated enforcers.	10
Consumer Credit Act 1974	(1) All public designated enforcers. (2) All private designated enforcers.	15
Parts 1 and 2 and Chapter 5 of Part 3 of, and Schedules 2 and 3 and Part 3 of Schedule 5 to, the Consumer Rights Act 2015	(1) All public designated enforcers, other than – (a) the Department of Health in Northern Ireland; (b) the Department for Infrastructure in Northern Ireland; (c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services); (d) the Maritime and Coastguard Agency;	20
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Enactment	Authorised enforcers	Information about transitional etc provision
Malicious Communications Act 1988	(1) All public designated enforcers, other than—	5
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	10
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	15
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	20
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Misrepresentation Act 1967	(1) All public designated enforcers, other than—	25
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	30
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	35
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	40
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
		See Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630) for provision about the application of provisions of the Act in connection with the coming into force of CRA 2015

Enactment	Authorised enforcers	Information about transitional etc provision
Sections 13 and 16 of the National Lottery Act 1993	(1) All public designated enforcers, other than—	5
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	10
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	15
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	20
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Section 4 of the Prices Act 1974	(1) All public designated enforcers, other than—	25
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	30
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	35
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	40
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Protection from Harassment Act 1997	(1) All public designated enforcers, other than—	
	(a) the Department of Health in Northern Ireland;	45

Enactment	Authorised enforcers	Information about transitional etc provision
	(b) the Department for Infrastructure in Northern Ireland;	5
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	10
	(d) the Maritime and Coastguard Agency;	15
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Sections 75 and 76 of the Road Traffic Act 1988	(1) All public designated enforcers, other than—	20
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	25
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	30
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	35
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Sale of Goods Act 1979	(1) All public designated enforcers.	40
	(2) All private designated enforcers.	
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Enactment	Authorised enforcers	Information about transitional etc provision
	(e) the Office for the Traffic Commissioner; (f) the Secretary of State. (2) All private designated enforcers.	5
2. Secondary legislation		
Regulations 19(1) and (2) of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (S.I. 2015/542)	(1) All public designated enforcers. (2) All private designated enforcers.	10
Regulations 2, 4, 13, 15 and 18 of the Business Protection from Misleading Marketing Regulations 2008 (S.I. 2008/1276)	(1) All public designated enforcers. (2) All private designated enforcers.	15
Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 (S.I. 2014/2833)	(1) All public designated enforcers. (2) All private designated enforcers.	20
Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005 (S.I. 2005/975)	(1) All public designated enforcers. (2) All private designated enforcers.	See regulation 8 of the Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484) for provision about the application of regulations that have been revoked
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Enactment	Authorised enforcers	Information about transitional etc provision
Regulations 2018 (S.I. 2018/634)		5
Parts 2 and 3 and regulations 18, 19, 20(1), 20(3) to 20(5), 21 to 25, 27(2) and 27(3) of, and Schedules 1 to 6 to, the Payment Accounts Regulations 2015 (S.I. 2015/2038)	(1) All public designated enforcers. (2) All private designated enforcers.	10
Price Marking Order 2004 (S.I. 2004/102)	(1) All public designated enforcers. (2) All private designated enforcers.	15
Regulations 19 to 26, 30 and 32 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426)	(1) All public designated enforcers. (2) All private designated enforcers.	20
Provision of Services Regulations 2009 (S.I. 2009/2999)	(1) All public designated enforcers. (2) All private designated enforcers.	25
Rail Passengers' Rights and Obligations Regulations 2010 (S.I. 2010/1504)	(1) All public designated enforcers. (2) All private designated enforcers.	
Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013 (S.I. 2013/1865)	(1) All public designated enforcers. (2) All private designated enforcers.	30
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (S.I. 2010/2960)	(1) All public designated enforcers. (2) All private designated enforcers.	35
Rules made under sections 137A, 137R and	(1) All public designated enforcers. (2) All private designated enforcers.	40

Enactment	Authorised enforcers	Information about transitional etc provision
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	5
	(d) the Maritime and Coastguard Agency;	10
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	15
	(2) All private designated enforcers.	
Malicious Communications (Northern Ireland) Order 1988 (S.I. 1988/1849 (N.I. 18))	(1) All public designated enforcers, other than—	
	(a) the Department of Health in Northern Ireland;	20
	(b) the Department for Infrastructure in Northern Ireland;	
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	25
	(d) the Maritime and Coastguard Agency;	30
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	
	(2) All private designated enforcers.	35
Misrepresentation Act (Northern Ireland) 1967	(1) All public designated enforcers, other than—	
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	40
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003	45

Enactment	Authorised enforcers	Information about transitional etc provision
establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights		5
Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air	(1) All public designated enforcers. (2) All private designated enforcers.	10
Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations	(1) All public designated enforcers. (2) All private designated enforcers.	15
Article 23 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community	(1) All public designated enforcers. (2) All private designated enforcers.	20
Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and	(1) All public designated enforcers. (2) All private designated enforcers.	25
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Enactment	Authorised enforcers	Information about transitional etc provision
amending Regulation (EC) No 2006/2004		5
Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004	(1) All public designated enforcers. (2) All private designated enforcers.	10
Article 10(4) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions	(1) All public designated enforcers. (2) All private designated enforcers.	15
4. Saved legislation		
Cancellation of Contracts made in a Consumer’s Home or Place of Work etc. Regulations 2008 (S.I. 2008/1816)	(1) All public designated enforcers. (2) All private designated enforcers.	See regulation 2(b) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations
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		Regulations 2013 (S.I. 2013/3134) for provision about the application of the Regulations in connection with their revocation
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Enactment	Authorised enforcers	Information about transitional etc provision	
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	the application of the regulation in connection with its revocation	5
	(d) the Maritime and Coastguard Agency;		10
	(e) the Office for the Traffic Commissioner;		
	(f) the Secretary of State.		15
	(2) All private designated enforcers.		
Regulation 15 of the Sale and Supply of Goods to Consumers Regulations 2002 (S.I. 2002/3045)	(1) All public designated enforcers, other than—	See Article 6 of the Consumer Rights Act 2015 (Commencement	20
	(a) the Department of Health in Northern Ireland;	No. 3, Transitional Provisions,	
	(b) the Department for Infrastructure in Northern Ireland;	Savings and Consequential	25
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	Order 2015 (S.I. 2015/1630) for provision about the application of the	30
	(d) the Maritime and Coastguard Agency;	regulation in connection with its revocation	35
	(e) the Office for the Traffic Commissioner;		
	(f) the Secretary of State.		
	(2) All private designated enforcers.		
Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 (S.I. 2002/3041)	(1) All public designated enforcers, other than—	See regulations 55 and 56 of the Tobacco and Related	40
	(a) the Department of Health in Northern Ireland;	Products Regulations	
	(b) the Department for Infrastructure in Northern Ireland;	2016 (S.I. 2016/507) for provision about the application of the	45
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003		

Enactment	Authorised enforcers	Information about transitional etc provision	
	(regulation of premium rate services);	Regulations in connection with their revocation	5
	(d) the Maritime and Coastguard Agency;		
	(e) the Office for the Traffic Commissioner;		10
	(f) the Secretary of State.		
	(2) All private designated enforcers.		
Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083)	(1) All public designated enforcers.	See Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (S.I. 2015/1630) for provision about the application of the Regulations in connection with their revocation)	15
	(2) All private designated enforcers.		20
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5. Other subordinate legislation			
Any other subordinate legislation (not otherwise listed in this Schedule) so far as made under an enactment so listed	(1) All public designated enforcers.		
	(2) All private designated enforcers.		35

PART 2

OBLIGATIONS AND RULES OF LAW

Obligation or rule of law	Authorised enforcers	
Breach of contract for the supply of goods, services or digital content (whether or not breach is waived)	(1) All public designated enforcers, other than—	
	(a) the Department of Health in Northern Ireland;	5
	(b) the Department for Infrastructure in Northern Ireland;	
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	10
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	15
	(2) All private designated enforcers.	
Breach of duty of care owed to consumer under law of tort	(1) All public designated enforcers, other than—	
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	20
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	25
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Breach of duty of care owed to consumer under law of delict	(1) All public designated enforcers, other than—	30
	(a) the Department of Health in Northern Ireland;	
	(b) the Department for Infrastructure in Northern Ireland;	
	(c) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);	35
	(d) the Maritime and Coastguard Agency;	
	(e) the Office for the Traffic Commissioner;	40
	(f) the Secretary of State.	
	(2) All private designated enforcers.	
Any rule of law in Scotland which provides comparable	(1) All public designated enforcers.	
	(2) All private designated enforcers.	

Enactment	Extent	
Consumer Rights (Payment Surcharges) Regulations 2012	Regulations 4 and 6A to 10	
Electronic Commerce (EC Directive) Regulations 2002	Regulations 6, 7, 8, 9 and 11	5
Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions	Article 10(4)	10
Package Travel and Linked Travel Arrangements Regulations 2018	All regulations	
Price Marking Order 2004	The whole Order	
Price Marking Order (Northern Ireland) 2004 (S.R. (N.I.) 2004 No 368)	The whole Order	15
Provision of Services Regulations 2009	All regulations	
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010	All regulations	20
3. Saved legislation		
Sale of Goods Act 1979	The whole Act, so far as it continues to apply by virtue of the saving made by Article 6(1) of the Consumer Rights Act (Commencement No 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015	25
Supply of Goods and Services Act 1982	The whole Act, so far as it continues to apply by virtue of the saving made by Article 6(1) of the Consumer Rights Act (Commencement No 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015	30
Supply of Goods (Implied Terms Act) 1973	The whole Act, so far as it continues to apply by virtue of the saving made by Article 6(1) of the Consumer Rights Act (Commencement No 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015	35
Unfair Contract Terms Act 1977	The whole Act, so far as it continues to apply by virtue of the saving made by Article 6(1) of the Consumer Rights Act (Commencement	40

Enactment	Extent	
	No 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015	
Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 (S.I. 2008/1816)	All regulations (see regulation 2(b) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (S.I. 2013/3134) for provision about the application of the Regulations in connection with contracts entered into before 13th June 2014).	5
Consumer Protection (Distance Selling) Regulations 2000 (S.I. 2000/2334)	All regulations (see regulation 2(a) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 for provision about the application of the Regulations in connection with contracts entered into before 13th June 2014).	10
Package Travel, Package Holidays and Package Tours Regulations 1992 (S.I. 1992/3288)	All regulations (see regulation 37(2) of the Package Travel and Linked Travel Arrangements Regulations 2018 (S.I. 2018/634) for provision about the application of the Regulations in connection with their revocation)	15
Sale and Supply of Goods to Consumers Regulations 2002 (S.I. 2002/3045)	Regulation 15 (see Article 6(3) of the Consumer Rights Act 2015 (Commencement No 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 for provision about the application of the Regulation in connection with its revocation)	20
Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083)	All regulations (see Article 6(4) of the Consumer Rights Act 2015 (Commencement No 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 for provision about the application of the Regulations in connection with their revocation)	25
4. Other subordinate legislation		30
Any other subordinate legislation (not otherwise listed in this Schedule) so far as made under an enactment so listed	The entirety of the legislation.	35

SCHEDULE 15

Section 200

INVESTIGATORY POWERS

Introductory

1 Schedule 5 to CRA 2015 (investigatory powers) is amended as follows.

Penalties for non-compliance with information notices 5

2 (1) Paragraph 15 is amended in accordance with sub-paragraphs (2) and (3).

(2) In sub-paragraph (3)–

(a) in the opening words for “may” substitute “must”;

(b) after paragraph (b) insert–

“(c) the circumstances in which a monetary penalty may be payable under this Part of this Schedule in relation to non-compliance with the notice.” 10

(3) After paragraph 16 insert–

“Non-compliance with notice under paragraph 14: power of court to impose monetary penalties 15

16A (1) This paragraph applies where–

(a) an enforcer or an officer of an enforcer has given a notice to a person (“the respondent”) under paragraph 14, and

(b) the enforcer considers that the respondent has, without reasonable excuse, failed to comply with the notice. 20

(2) The enforcer or an officer of the enforcer may make an application under this paragraph to the court.

(3) If the court finds that the respondent has, without reasonable excuse, failed to comply with the notice, the court may make an order that requires the respondent to pay a monetary penalty to the enforcer. 25

(4) The amount of the penalty 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. 30

(5) The penalty must not exceed–

(a) in the case of a fixed amount, £30,000 or, if higher, 1% of the total value of the turnover (if any) of the respondent;

(b) in the case of an amount calculated by reference to a daily rate, £15,000 per day or, if higher, 5% of the total value of the daily turnover (if any) of the respondent; 35

- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day.
- (6) In imposing a penalty by reference to a daily rate—
- (a) no account is to be taken of any days before the notification date, and 5
- (b) unless the court determines an earlier date (whether before or after the order imposing the penalty is made), the amount payable ceases to accumulate on the day on which the requirements of the notice under paragraph 14 are complied with. 10
- (7) An order under this paragraph must state—
- (a) the amount of the penalty (including whether it is a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate); 15
- (b) the grounds on which the penalty is imposed together with any other factors that the court considers justify the giving of the penalty or its amount;
- (c) in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate; 20
- (d) how the penalty is to be paid to the enforcer;
- (e) the date or dates, no earlier than the end of 28 days beginning with the date of service of the order on the respondent, by which the penalty or (as the case may be) different portions of it are required to be paid; 25
- (f) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; 30
- (g) that the respondent has the right to apply under sub-paragraph (8), or to appeal against the order, and the main details of those rights.
- (8) The respondent may, within 14 days of the notification date, apply to the court for it to specify a different date or dates by which the penalty, or portions of it, are to be paid. 35
- (9) An application by an enforcer or officer of an enforcer under this paragraph—
- (a) may be made in addition to, or instead of, an application under paragraph 16, and 40
- (b) where made in addition to an application under paragraph 16, may be combined with the application under that paragraph.

- (10) In addition to any right of appeal on a point of law, a person liable to pay a penalty by virtue of an order under this paragraph may appeal in respect of the amount of the penalty.
- (11) Where an appeal is brought in respect of a penalty imposed by virtue of an order under this paragraph, the penalty is not payable until the appeal is determined or withdrawn, unless the court dealing with the appeal orders otherwise. 5
- (12) Sub-paragraphs (4) and (5) of paragraph 16 apply to an order under this paragraph as they apply to an order under that paragraph. 10
- (13) In this paragraph, other than in sub-paragraph (11) –
“the court” has the same meaning as in paragraph 16;
“the notification date”, in relation to an order under this paragraph, means the date on which notice of the application for the order is given to the respondent. 15

Non-compliance with notice under paragraph 14: powers of CMA to give provisional enforcement notice

- 16B(1) This paragraph applies where –
- (a) the CMA has given a notice to a person (“the respondent”) under paragraph 14, and 20
 - (b) the CMA has reasonable grounds to believe that the respondent has failed to comply with the notice.
- (2) The CMA may give to the respondent a notice under this paragraph (a “provisional enforcement notice”).
- (3) A provisional enforcement notice must – 25
- (a) set out the grounds on which it is given, including the respondent’s acts or omissions giving rise to the giving of the notice;
 - (b) specify such actions as the CMA considers appropriate to be taken by the respondent for the purposes of securing compliance with the notice under paragraph 14; 30
 - (c) invite the respondent to make representations to the CMA about the matters set out in the notice;
 - (d) specify the means by which, and the time by which, such representations must be made. 35
- (4) The means specified under sub-paragraph (3)(d) for making representations must include arrangements for them to be made orally if the respondent chooses to make representations in that way.
- (5) If the CMA is considering the imposition of a monetary penalty on the respondent (see paragraph 16C), the provisional enforcement notice must also state – 40

- (a) that the CMA is considering imposing a monetary penalty;
- (b) the proposed amount of the penalty (including whether the penalty would be a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate); 5
- (c) any further factors (in addition to those provided under sub-paragraph (3)(a)) which the CMA considers justify the imposition of the proposed penalty and its amount or amounts. 10

Non-compliance with notice under paragraph 14: power of CMA to give final enforcement notice

- 16C(1) This paragraph applies where—
- (a) the CMA has given to the respondent a provisional enforcement notice under paragraph 16B in respect of a notice given to the respondent under paragraph 14, 15
 - (b) the time for the respondent to make representations to the CMA in accordance with the provisional enforcement notice has expired, and
 - (c) after considering such representations (if any), the CMA is satisfied that the respondent has failed to comply with the notice given under paragraph 14. 20
- (2) The CMA may by notice (a “final enforcement notice”) impose on the respondent a requirement to do either or both of the following— 25
- (a) a requirement to pay a monetary penalty;
 - (b) a requirement to comply with such directions as the CMA considers appropriate for the purpose of securing the respondent’s compliance with the notice under paragraph 14. 30
- (3) A requirement under sub-paragraph (2)(a) to pay a monetary penalty may be imposed only if the CMA is satisfied that the respondent’s failure in question is without reasonable excuse.
- (4) The amount of a monetary penalty must be— 35
- (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.
- (5) The penalty must not exceed— 40
- (a) in the case of a fixed amount, £30,000 or, if higher, 1% of the total value of the turnover (if any) of the respondent;

- (b) in the case of an amount calculated by reference to a daily rate, £15,000 per day or, if higher, 5% of the total value of the daily turnover (if any) of the respondent;
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, such fixed amount and such amount per day. 5
- (6) In imposing a penalty by reference to a daily rate—
 - (a) no account is to be taken of any days before the date on which the provisional enforcement notice mentioned in sub-paragraph (1)(a) was given to the respondent, and 10
 - (b) unless the CMA determines an earlier date, the amount payable ceases to accumulate on the day on which the requirements of the notice under paragraph 14 are complied with.
- (7) A final enforcement notice that imposes a penalty on the respondent must state— 15
 - (a) the amount of the penalty (including whether it is a fixed amount, an amount calculated by reference to a daily rate or both a fixed amount and an amount calculated by reference to a daily rate); 20
 - (b) the grounds on which the penalty is imposed together with any other factors that the CMA considers justify the giving of the penalty or its amount;
 - (c) in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate; 25
 - (d) how the penalty is to be paid to the CMA;
 - (e) the date or dates, no earlier than the end of 28 days beginning with the date of service of the notice on the respondent, by which the penalty or (as the case may be) different portions of it are required to be paid; 30
 - (f) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; 35
 - (g) that the respondent has the right to apply under sub-paragraph (8), or to appeal under paragraph 16D, and the main details of those rights.
- (8) The respondent may, within 14 days of the date of service of the notice, apply to the CMA for it to specify a different date or dates by which the penalty, or different portions of it, are to be paid. 40
- (9) In deciding whether, and if so how, to proceed under this paragraph the CMA must have regard to the statement of policy most recently published under paragraph 16F at the time of the act or omission giving rise to the penalty. 45

- (10) The CMA may publish a notice given under this paragraph in such manner as it considers appropriate.
- (11) Sections 183 to 188 of the Digital Markets, Competition and Consumers Act 2023 apply to a direction given in a notice under this paragraph as if the direction were an enforcement direction for the purposes of those sections. 5

Appeals against final enforcement notice

- 16D(1) A person to whom a final enforcement notice is given may appeal to the appropriate court against—
- (a) a decision to impose a monetary penalty by virtue of the notice, 10
 - (b) the nature or amount of any such penalty, or
 - (c) the giving of directions by virtue of the notice.
- (2) The grounds for an appeal under sub-paragraph (1)(a) or (b) are that— 15
- (a) the decision to impose a monetary penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the penalty is unreasonable, or
 - (d) the decision was unreasonable or wrong for any other reason. 20
- (3) The grounds for an appeal under sub-paragraph (1)(c) are that—
- (a) the decision to give the directions was based on an error of fact,
 - (b) the decision was wrong in law, 25
 - (c) the nature of the directions is unreasonable, or
 - (d) the decision was unreasonable or wrong for any other reason.
- (4) On an appeal under this paragraph the appropriate court may quash, confirm or vary the final enforcement notice. 30
- (5) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which the final enforcement notice was given to the person seeking to bring the appeal.
- (6) The appropriate court may extend the period mentioned in sub-paragraph (5) for bringing an appeal. 35
- (7) Where an appeal is brought under this paragraph, the penalty is not payable until the appeal is determined or withdrawn, unless the appropriate court orders otherwise.
- (8) In this paragraph “the appropriate court” means— 40

- (a) in relation to England and Wales or Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Outer House of the Court of Session.

Recovery of penalties imposed under paragraph 16C 5

- 16E(1) This paragraph applies where a penalty imposed by a final enforcement notice given under paragraph 16C, or any part of such a penalty, has not been paid by the date on which it is required to be paid and—
- (a) an appeal under paragraph 16D has not been brought before the end of the period mentioned in sub-paragraph (5) of that paragraph, or 10
 - (b) any such appeal that was brought has been determined, withdrawn or otherwise disposed of.
- (2) The CMA may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid. 15
- (3) Any such penalty and interest may be recovered summarily (or, in Scotland, recovered) as a civil debt by the CMA.

Statement of policy in relation to penalties under paragraph 16C 20

- 16F(1) The CMA must prepare and publish a statement of policy in relation to the use of its power to impose penalties under paragraph 16C.
- (2) The statement must include a statement about the considerations relevant to the determination of— 25
- (a) whether to impose a penalty under that paragraph, and
 - (b) the nature and amount of any such penalty.
- (3) The CMA may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) In preparing or revising its statement of policy the CMA must consult— 30
- (a) the Secretary of State, and
 - (b) such other persons as the CMA considers appropriate.
- (5) A statement of policy, or revised statement, may not be published under this section without the approval of the Secretary of State. 35

Penalties imposed under paragraphs 16A and 16C: further provision

- 16G(1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time carries interest at the statutory rate.

- (2) Where an application has been made under paragraph 16A(8) or 16C(8), the penalty is not required to be paid until the application has been determined, withdrawn or otherwise disposed of.
- (3) If a portion of a penalty has not been paid by the date required for it, the enforcer to whom it is payable may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately. 5
- (4) Where on an appeal under paragraph 16D the appropriate court substitutes a penalty of a different nature or of a lesser amount, the court may require the payment of interest at the statutory rate on the substituted penalty from whatever date it considers appropriate (which may include a date before the determination of the appeal). 10
- (5) In the case of a monetary penalty imposed on a firm, the penalty is to be paid out of the assets or funds of the firm. 15
- (6) *Sums received from a person towards payment of a monetary penalty must be paid –*
- (a) *in the case of a penalty imposed by an order of the Court of Session or the Sheriff, into the Scottish Consolidated Fund;* 20
- (b) *in the case of a penalty imposed by an order of a court in Northern Ireland, into the Consolidated Fund of Northern Ireland;*
- (c) *in any other case, into the Consolidated Fund of the United Kingdom.* 25
- (7) In this paragraph –
- “penalty” means a penalty imposed under paragraph 16A or 16C;
- “statutory rate” means the rate for the time being specified in section 17 of the Judgments Act 1838. 30

Meaning of “turnover” for purposes of paragraphs 16A and 16C

- 16H(1) References to “turnover” of a person in paragraphs 16A and 16C include –
- (a) turnover both in and outside the United Kingdom;
- (b) where the person controls another person, the turnover of that other person; 35
- (c) where the person is controlled by another person, the turnover of that other person.
- (2) The Secretary of State may by regulations –
- (a) make provision for determining when a person is to be treated as controlled by another person for the purposes of sub-paragraph (1)(b) and (c); 40

- (b) make provision for determining the turnover of a person for those purposes.
- (3) Regulations under this paragraph may, in particular, make provision as to—
 - (a) the amounts which are, or which are not, to be treated as comprising a person’s turnover or daily turnover; 5
 - (b) the date or dates by references to which a person’s turnover or daily turnover is to be determined.
- (4) Regulations under this paragraph may include provision enabling the court (within the meaning of paragraph 16A) or the CMA to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of sub-paragraph (3)). 10
- (5) Regulations under this paragraph are to be made by statutory instrument. 15
- (6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

Miscellaneous

- 16I (1) The CMA may not make an application under paragraph 16A in respect of a person’s failure to comply with a notice under paragraph 14 if the CMA has given to the person a final enforcement notice under paragraph 16C in respect of that failure. 20
- (2) The CMA may not give a person a final enforcement notice under paragraph 16C in respect of a failure to comply with a notice under paragraph 14 if— 25
 - (a) the CMA has made an application under paragraph 16A against the person in respect of that failure, and
 - (b) the application has been determined by the court (within the meaning of that paragraph).” 30

Extra-territorial application in relation to notices

3 After paragraph 17 insert—

“Extra-territorial application in relation to notices under paragraph 14

- 17A (1) This paragraph applies to the exercise of a power of an enforcer to give a person a notice under paragraph 14. 35
- (2) The power is exercisable so as to—
 - (a) give the notice to a person who is outside the United Kingdom;
 - (b) require the provision of information held outside the United Kingdom. 40

- (3) Sub-paragraph (4) applies where –
- (a) an enforcer proposes to give a notice to a person outside the United Kingdom by virtue of sub-paragraph (2)(a), and
 - (b) the enforcer does not consider that the person is a potential enforcement subject. 5
- (4) Where this sub-paragraph applies, the power to give the notice is exercisable only if the person has a UK connection.
- (5) A person has a UK connection if the person –
- (a) is a United Kingdom national, 10
 - (b) is an individual who is habitually resident in the United Kingdom,
 - (c) is a firm established in the United Kingdom,
 - (d) carries on business in the United Kingdom or by any means directs activities in the course of carrying on a business to consumers in the United Kingdom. 15
- (6) For the purposes of sub-paragraph (3)(b) a person (P) is a “potential enforcement subject”, in relation to a notice given by an enforcer to P by virtue of this paragraph, if the notice is given for the purposes of enabling the enforcer – 20
- (a) to exercise, or consider whether to exercise, a function mentioned in paragraph 13(2), (3), (7)(a) or (9)(b) in relation to P;
 - (b) to ascertain whether P has breached any legislation mentioned in paragraph 13(4); 25
 - (c) to ascertain whether P has complied with, or is complying with, an injunction or interdict mentioned in paragraph 13(7)(b);
 - (d) to determine whether to make an order of a kind mentioned in paragraph 13(9)(a) in respect of, or in relation to, P. 30
- (7) In sub-paragraph (5)(a) “United Kingdom national” means –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who is a British subject under the British Nationality Act 1981; 35
 - (c) a British protection person within the meaning of that Act.
- (8) For the purposes of sub-paragraph (5)(c), a firm is “established in the United Kingdom” if –
- (a) it is incorporated or formed under the law of a part of the United Kingdom, or 40
 - (b) it is administered under arrangements governed by the law of a part of the United Kingdom.

- (9) References in this paragraph to an enforcer include an officer of an enforcer.”

Means of giving notices

- 4 After paragraph 17A (inserted by paragraph 3 above) insert –
- “Means of giving notice under this Part of this Schedule 5
- 17B (1) This paragraph applies in relation to a notice given to a person under this Part of this Schedule.
- (2) The notice may be given by –
- (a) delivering it to the person,
 - (b) leaving it at the person’s proper address, 10
 - (c) sending it by post to the person at that address, or
 - (d) sending it to the person by email to the person’s email address.
- (3) A notice to a body corporate may be given in accordance with sub-paragraph (2) to any officer of that body. 15
- (4) A notice to a partnership may be given in accordance with sub-paragraph (2) to any partner or a person who has the control or management of the partnership business.
- (5) A notice to a firm other than a body corporate or a partnership may be given in accordance with sub-paragraph (2) to any member of the governing body of the firm. 20
- (6) A person’s proper address is –
- (a) in a case where the person has specified an address as one at which the person, or someone acting on the person’s behalf, will accept service of notices or other documents, that address; 25
 - (b) in any other case, the address determined in accordance with sub-paragraph (7).
- (7) A person’s proper address is (if sub-paragraph (6)(a) does not apply) – 30
- (a) in the case of a body corporate, its registered or principal office;
 - (b) in the case of a partnership, the principal office of the partnership;
 - (c) in the case of a firm other than a body corporate or a partnership, the principal office of the firm; 35
 - (d) in a case where none of paragraphs (a) to (c) apply, any address by means of which the enforcer or officer giving the notice believes, on reasonable grounds, that the notice will come to the attention of the person. 40
- (8) A person’s email address is –

- (a) any email address published for the time being by that person as an address for contacting that person, or
- (b) if there is no such published address, any email address by means of which the enforcer or officer giving the notice believes, on reasonable grounds, that the notice will come to the attention of that person. 5
- (9) In the case of—
- (a) a body corporate registered outside the United Kingdom,
- (b) a partnership carrying on business outside the United Kingdom, or 10
- (c) any other type of firm with offices outside the United Kingdom,
- references to its principal office include references to its principal office in the United Kingdom or, if it has no principal office in the United Kingdom, any place in the United Kingdom where it carries on business or conducts activities. 15
- (10) In this paragraph “officer”, in relation to a body corporate, means any director, manager, secretary or other similar officer of the body.
- (11) This paragraph does not limit other lawful means of giving notice.” 20

Access to documents

- 5 In paragraph 32—
- (a) in sub-paragraph (2), in the words before paragraph (a), after “on” insert “, or accessible from,”; 25
- (b) in sub-paragraph (5)—
- (i) after “documents on” insert “, or accessible from,” and
- (ii) after “with” insert “, or access to them would otherwise be restricted,”.

Meaning of “firm” 30

- 6 In paragraph 8, after the definition of “enforcement order” insert—
- ““firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;”.

SCHEDULE 16

Section 207

PART 3: MINOR AND CONSEQUENTIAL AMENDMENTS

Companies Act 1985

- 1 (1) Schedule 15D to the Companies Act 1985 is amended as follows.
- (2) In paragraph 20— 5
 - (a) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of the Digital Markets, Competition and Consumers Act 2023”;
 - (b) for “that Part” substitute “that Chapter”.
- (3) In paragraph 27 for “section 230(2) of the Enterprise Act 2002” substitute “section 163(2) of the Digital Markets, Competition and Consumers Act 2023”. 10

Enterprise Act 2002

- 2 EA 2002 is amended as follows.
- 3 Omit Part 8 (including Schedule 13).
- 4 In section 238 (information), in subsection (1)— 15
 - (a) in paragraph (a) for “, 7 or 8” substitute “or 7”;
 - (b) after paragraph (b) insert—
 - “(ba) Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023;”.
- 5 In section 243 (overseas disclosures), in subsection (3)(a) for the words from “designated” to the end substitute “a private designated enforcer for the purposes of Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”. 20

Companies Act 2006

- 6 (1) The Companies Act 2006 is amended as follows. 25
- (2) In Part 2 of Schedule 2—
 - (a) in paragraph 28—
 - (i) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”; 30
 - (ii) for “that Part” substitute “that Chapter”;
 - (b) in paragraph 36 for the words after “under” to the end substitute “section 163(2) of the Digital Markets, Competition and Consumers Act 2023”.
- (3) In Schedule 11A— 35

- (a) in paragraph 42, for the words after “under” to the end substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023 (enforcement of consumer protection law)”;
- (b) in paragraph 51 for the words after “under” to the end substitute “section 163(2) of the Digital Markets, Competition and Consumers Act 2023 (notice of intention to prosecute etc)”. 5

Regulatory Enforcement and Sanctions Act 2008

- 7 In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008, at the appropriate place insert—
- “Digital Markets, Competition and Consumers Act 2003, Chapters 3 and 4 of Part 3”. 10

Consumer Rights Act 2015

- 8 (1) Schedule 5 to CRA 2015 (investigatory powers) is amended as follows.
- (2) In paragraph 2—
- (a) in sub-paragraph (1), omit paragraph (b); 15
 - (b) in sub-paragraph (2) for paragraph (b) substitute—
 - “(b) an authorised enforcer for the purposes of that Part (see paragraph 20(7)).”
- (3) Omit paragraph 4 (including the heading before it).
- (4) In paragraph 5 for the words from “which—” to the end substitute “which is a public designated enforcer for the purposes of Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023 (see section 143(1) of that Act), but for this purpose does not include—
- (a) the Competition and Markets Authority,
 - (b) a local weights and measures authority in Great Britain, or 25
 - (c) the Department for the Economy in Northern Ireland.”
- (5) In paragraph 8—
- (a) omit the definition of “Schedule 13 infringement”;
 - (b) in the definition of “enforcement order” for “section 217 of the Enterprise Act 2002” substitute “section 148 of the Digital Markets, Competition and Consumers Act 2023”; 30
 - (c) in the definition of “interim enforcement order” for “section 218” substitute “section 151”;
 - (d) in the definition of “interim online interface order” for “section 218ZC” substitute “section 154”; 35
 - (e) in the definition of “online interface order” for “section 218ZB” substitute “section 153”.
- (6) In paragraph 13—
- (a) in sub-paragraph (2)—

- (i) in paragraph (a) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”;
 - (ii) in paragraph (b) after “under” insert “Chapter 3 of”;
 - (iii) in paragraph (e) for the words from “section 217(9),” to the end substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”;
 - (b) in sub-paragraph (3) –
 - (i) in the opening words, for “Britain,” substitute “Britain or” and omit “or a Schedule 13 enforcer other than the Competition and Markets Authority”;
 - (ii) in paragraph (a) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”;
 - (iii) in paragraph (c) for “section 217(9) or 218(10) of the Enterprise Act 2002” substitute “section 148(2)(b) or section 151(2)(b) of the Digital Markets, Competition and Consumers Act 2023”;
 - (iv) in paragraph (d) for “section 219” substitute “section 155”;
 - (c) in sub-paragraph (10) for the words from “which–” to the end substitute “which is a private designated enforcer for the purposes of Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023 (see section 143(2) of that Act)”.
- (7) In the heading to Part 4 (before paragraph 19), for “Schedule 13” substitute “authorised”.
- (8) In the heading before paragraph 20, for “Schedule 13” substitute “authorised”.
- (9) In paragraph 20 –
- (a) in sub-paragraph (1) for “a Schedule 13” substitute “an authorised”;
 - (b) in sub-paragraph (2) –
 - (i) for “a Schedule 13”, where it first occurs, substitute “an authorised”;
 - (ii) for the words from “Part 8” to the end substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”;
 - (c) in sub-paragraph (3) –
 - (i) in the opening words, for “Schedule 13” substitute “authorised”;
 - (ii) in paragraph (a), for “Schedule 13” substitute “relevant”;
 - (iii) in paragraph (c), for “section 217(9) or 218(10) of the Enterprise Act 2002” substitute “section 148(2)(b) or section 151(2)(b) of the Digital Markets, Competition and Consumers Act 2023”;
 - (iv) in paragraph (d), for “section 219” substitute “section 155”;

- (d) in sub-paragraph (3A) –
- (i) in the opening words, for “A Schedule 13” substitute “An authorised”;
 - (ii) in paragraph (b) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”; 5
- (e) in sub-paragraph (4) –
- (i) in the opening words, for “A Schedule 13” substitute “An authorised”;
 - (ii) in paragraph (b) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”; 10
- (f) in sub-paragraph (5) –
- (i) in the opening words, for “A Schedule 13” substitute “An authorised”; 15
 - (ii) in paragraph (a) for “Schedule 13” substitute “relevant”;
 - (iii) in paragraph (b) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”;
- (g) in sub-paragraph (6) – 20
- (i) for “A Schedule 13” substitute “An authorised”;
 - (ii) for “Part 8 of the Enterprise Act 2002” substitute “Chapter 3 or 4 of Part 3 of the Digital Markets, Competition and Consumers Act 2023”;
- (h) after sub-paragraph (6) insert – 25
- “(7) Each of the following is an “authorised enforcer” for the purposes of this Part of this Schedule –
- (a) the Competition and Markets Authority;
 - (b) the Civil Aviation Authority;
 - (c) the Financial Conduct Authority; 30
 - (d) the Secretary of State;
 - (e) the Department of Health in Northern Ireland;
 - (f) the Office of Communications;
 - (g) the Department for the Economy in Northern Ireland; 35
 - (h) every local weights and measures authority in Great Britain;
 - (i) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003;
 - (j) the Information Commissioner; 40
 - (k) the Department for Infrastructure in Northern Ireland;
 - (l) the Maritime and Coastguard Agency;
 - (m) the Office of Rail and Road;

(n) the Office for the Traffic Commissioner.

(8) In this paragraph “relevant infringement” means an act or omission which is a relevant infringement for the purposes of Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023 by virtue of contravening an enactment listed in paragraph 20A of this Schedule.”

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(10) After paragraph 20 insert –

“Paragraph 20: listed enactments

20A The enactments referred to in paragraph 20(8) are the following –

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Sections 9 to 11 of the Supply of Goods (Implied Terms) Act 1973, to the extent that those sections continue to apply to a contract for a trader to supply goods to a consumer by virtue of the saving made, in connection with their amendment by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015.

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The Consumer Credit Act 1974 and secondary legislation made under that Act excluding requirements relating to consumer hire agreements.

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Sections 6(2), 7(1), 7(2), 20(2), 21 and 27(2) of the Unfair Contract Terms Act 1977, to the extent that those sections remain in force, or continue to apply to a consumer contract, by virtue of the saving made, in connection with their repeal or disapplication by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015.

25

Sections 13 to 15, 15B, 20 and 32 of the Sale of Goods Act 1979, to the extent that those sections continue to apply to a contract for a trader to supply goods to a consumer by virtue of the saving made, in connection with their amendment by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015.

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Sections 48A to 48F of the Sale of Goods Act 1979, to the extent that those sections remain in force by virtue of the saving made, in connection with their repeal by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015.

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Sections 3 to 5, 11C to 11E and 13 of the Supply of Goods and Services Act 1982, and any rule of law in Scotland

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which provides comparable protection to section 13, to the extent that those sections continue to apply to a contract for a trader to supply goods or, in the case of section 13, a contract for a trader to supply a service, to a consumer by virtue of the saving made, in connection with their amendment by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015. 5

Sections 11M to 11S of the Supply of Goods and Services Act 1982 to the extent that those sections remain in force by virtue of the saving made, in connection with their repeal by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015. 10

The Package Travel, Package Holidays and Package Tours Regulations 1992, to the extent that those Regulations remain in force by virtue of the saving made, in connection with their revocation, by regulation 37(2) of the Package Travel and Linked Travel Arrangements Regulations 2018. 20

The Unfair Terms in Consumer Contracts Regulations 1999, to the extent that those Regulations remain in force by virtue of the saving made, in connection with their revocation by this Act, by Article 6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015. 25

Rules made under sections 137A, 137R and 137T of the Financial Services and Markets Act 2000 which give effect to Articles 10, 11, 13 to 18 and 21 to 23, Chapter 10 and Annexes I and II of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property. 30

The Consumer Protection (Distance Selling) Regulations 2000, to the extent that those Regulations remain in force for contracts entered into prior to their disapplication by virtue of regulation 2(a) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. 35

Sections 319, 321, 322, 325, 368F, 368G and 368H of the Communications Act 2003. 40

Regulations 6, 7, 8, 9 and 11 of the Electronic Commerce (EC Directive) Regulations 2002.

Regulation 15 of the Sale and Supply of Goods to Consumers Regulations 2002, to the extent that regulation 15 remains in force by virtue of the saving made, in connection with its revocation by the this Act, by Article 45

6 of the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015.	
Regulations 19 to 26, 30 and 32 of the Privacy and Electronic Communications (EC Directive) Regulations 2003.	5
The Price Marking Order 2004.	
Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights.	10
The Financial Services (Distance Marketing) Regulations 2004 and rules corresponding to any provisions of those Regulations made by the Financial Conduct Authority or a designated professional body within the meaning of section 326(2) of the Financial Services and Markets Act 2000.	15
The Price Marking Order (Northern Ireland) 2004.	
The Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005.	20
Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.	25
Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.	
Regulations 2, 4, 13, 15 and 18 of the Business Protection from Misleading Marketing Regulations 2008.	30
The Consumer Protection from Unfair Trading Regulations 2008.	
The Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008, to the extent that those Regulations remain in force for contracts entered into prior to their disapplication by regulation 2(b) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.	35
Article 23 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.	40
The Provision of Services Regulations 2009.	
The Rail Passengers' Rights and Obligations Regulations 2010.	45

Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway.	5
The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.	5
Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.	10
Chapters 1 and 2 of Part 14 of the Human Medicines Regulations 2012.	10
Regulations 4 and 6A to 10 of the Consumer Rights (Payment Surcharges) Regulations 2012.	15
The Merchant Shipping (Passengers' Rights) Regulations 2013.	15
The Operation of Air Services in the Community (Pricing etc.) Regulations 2013.	20
The Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013.	20
The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.	25
The Bus and Coach Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2014.	25
The Bus and Coach Passengers Rights and Obligations (Designation of Terminals, Tour Operators and Enforcement) Regulations (Northern Ireland) 2014.	30
The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014.	30
Regulation 19(1) and (2) of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.	35
Sections 2, 3, 5, 9 to 15, 19, 23, 24, 28 to 32, 36(3) and (4), 37, 38, 42, 50, 54, 58, 59, 61 to 64, 67 to 70, 72 to 74 of, and Schedules 2 and 3 and Part 3 of Schedule 5 to, this Act.	35
Article 10(4) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.	40
Parts 2 and 3 and regulations 18, 19, 20(1), 20(3) to 20(5), 21 to 25, 27(2) and 27(3) of, and Schedules 1 to 6 to, the Payment Accounts Regulations 2015.	45
The Rail Passengers Rights and Obligations (Designation and Enforcement) Regulations (Northern Ireland) 2017.	45

The Package Travel and Linked Travel Arrangements
Regulations 2018.”

- (11) In paragraph 32, in sub-paragraph (3) –
- (a) in paragraph (b) –
 - (i) for “a Schedule 13 enforcer” substitute “an authorised enforcer”; 5
 - (ii) for “Schedule 13 infringement” substitute “relevant infringement (as defined by paragraph 20(8))”;
 - (b) in paragraph (c) for “a Schedule 13 enforcer” substitute “an authorised enforcer”. 10
- (12) In paragraph 41, in sub-paragraph (4) –
- (a) in the opening words, for “a Schedule 13 enforcer” substitute “an authorised enforcer for the purposes of Part 4 of this Schedule (see paragraph 20(7))”;
 - (b) in paragraph (a) for “Schedule 13 infringement” substitute “relevant infringement (as defined by paragraph 20(8))”. 15
- (13) In paragraph 45, in sub-paragraph (1), for paragraph (a) substitute –
- “(a) Chapter 3 of Part 3 of the Digital Markets, Competition and Consumers Act 2023,”.

SCHEDULE 17

Section 208 20

PART 3: TRANSITIONAL AND SAVING PROVISIONS IN RELATION TO PART 3

Interpretation

- 1 In this Schedule –
- “commencement date” means the date on which section 145 comes into force; 25
 - “continuing conduct” means an act or omission of a person that –
 - (a) takes place before the commencement date, and
 - (b) is repeated, or continues to take place, on or after that date;
 - “enforcement action” –
 - (a) in relation to the new law, means proceedings or other steps taken by virtue of a power conferred under the new law, and 30
 - (b) in relation to the old law, means proceedings or other steps taken by virtue of a power conferred under the old law;
 - “the new law” means Chapters 3 and 4 of Part 3 (and any provisions of law relating to those Chapters, including Schedule 5 to CRA 2015 as amended by this Act); 35

“the old law” means Part 8 of EA 2002 (and any provisions of law relating to that Part), as that Part had effect immediately before the commencement date.

General rules

- 2 (1) The new law applies only in respect of— 5
- (a) conduct of a person that takes place on or after the commencement date, or
 - (b) in the case of enforcement action under the new law in respect of conduct that a person is likely to engage in (but has not started to engage in), conduct of the person that is likely to take place on or after the commencement date. 10
- (2) The old law continues to apply—
- (a) in respect of conduct of a person that takes place before the commencement date;
 - (b) for the purposes of the taking of enforcement action relating to a breach of an order made by, or undertaking given to, the court under the old law; 15
 - (c) in a case where proceedings before a court under the old law have been started against a person before the commencement date, for the purposes of the continuation and completion of those proceedings (including any appeals relating to the proceedings). 20
- (3) In sub-paragraph (2)(c) the reference to proceedings being started against a person is a reference to an application being made against the person under section 215 or 218ZA of EA 2002.
- (4) This paragraph is subject to— 25
- (a) paragraph 3, which makes rules for cases involving continuing conduct, and
 - (b) paragraph 4, which makes rules for cases involving breach of undertakings given to enforcers.

Rules applicable to continuing conduct 30

- 3 (1) This paragraph applies where conduct of a person is continuing conduct.
- (2) The new law applies in respect of the person’s post-commencement conduct.
- (3) The new law also applies in respect of the person’s pre-commencement conduct for the purposes of enabling the taking of enforcement action under Chapter 3 or 4 of Part 3 in relation to that conduct. 35
- (4) Where the new law applies by virtue of sub-paragraph (3), a requirement under Chapter 3 or (as the case may be) Chapter 4 may be imposed on a person in respect of the relevant infringement in relation to which the enforcement action is taken only if a requirement of a corresponding kind could have been imposed on the person under the old law (and accordingly a monetary penalty, in particular, may not be imposed on the person). 40

- (5) In applying the new law in accordance with this paragraph in respect of a person’s post-commencement conduct, regard may be had to, and findings of fact or law may be made in respect of, the person’s pre-commencement conduct so far as necessary or appropriate for the purposes of determining any matter that falls to be determined in the application of the new law. 5
- (6) In this paragraph—
“post commencement conduct” means so much of a person’s continuing conduct as takes place on or after the commencement date;
“pre-commencement conduct” means so much of a person’s continuing conduct as takes place before the commencement date. 10

Rules applicable to undertakings given to enforcers under the old law

- 4 (1) This paragraph applies where an enforcer has accepted an undertaking from a person under the old law.
- (2) Enforcement action in respect of a person’s breach of the undertaking, whether the breach takes place before, on or after the commencement date, may be taken only under the old law. 15
- (3) Sub-paragraph (4) applies where a breach of the undertaking—
(a) takes place (to any extent) on or after the commencement date, and
(b) it appears to an enforcer that the act or omission comprising the breach, so far as taking place on or after that date— 20
(i) is also a commercial practice which constitutes a relevant infringement under the new law, or
(ii) is carried out by a person who is an accessory under the new law to such a commercial practice.
- (4) Enforcement action in respect of the act or omission may be taken— 25
(a) under the new law, or
(b) if the act or omission would also be a domestic or Schedule 13 infringement for the purposes of the old law, under the old law.
- (5) It is for the enforcer concerned to determine whether to take enforcement action under the new law or the old law in accordance with sub-paragraph (4). 30
- (6) A breach of an undertaking that first takes place before the commencement date is to be treated for the purposes of this paragraph as also taking place on or after that date if the act or omission comprising the breach is repeated or continued on or after that date. 35

Information notices under Schedule 5 to CRA 2015

- 5 (1) The amendments made by paragraph 2(3) of Schedule 15 (which insert new paragraphs 16A to 16I into Schedule 5 to CRA 2015) have effect only in relation to an information notice given on or after the commencement date. 40

- (2) In sub-paragraph (1) “information notice” means a notice given under paragraph 14 of Schedule 5 to CRA 2015.

Further provision

- 6 Nothing in this Schedule limits the power under section 316(4) to make further transitional and saving provision in connection with the coming into force of the new law. 5

SCHEDULE 18

Section 217

COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

- 1 Claiming to be a signatory to a code of conduct when the trader is not.
- 2 Claiming that a code of conduct has an endorsement from a public or private body which it does not have. 10
- 3 Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
- 4 Claiming that a trader, a trader’s commercial practice, or a product has been approved, endorsed or authorised by a public or private body when— 15
- (a) the claim is false, or
- (b) the terms of the approval, endorsement or authorisation have not been, or are not being, complied with.
- 5 (1) Making an invitation to purchase products at a specified price where— 20
- (a) the trader has reasonable grounds for believing that it will not be possible for the trader to offer those products, or equivalent products, for supply at that price, in reasonable quantities, for a reasonable period of time (or to procure another trader to do so), and
- (b) the trader does not disclose that fact. 25
- (2) In sub-paragraph (1), the references to reasonable quantities and a reasonable period of time are references to what is reasonable having regard to—
- (a) the nature of the product,
- (b) the extent of advertising for the product, and 30
- (c) the price offered for the product.
- 6 Making an invitation to purchase products at a specified price and then— 35
- (a) refusing to show the advertised item to consumers,
- (b) refusing to take orders for it or deliver it within a reasonable time, or
- (c) demonstrating a defective sample of it, with the intention of promoting a different product.

- 7 Falsely stating that a product will only be available for a limited time, or that it will only be available on particular terms for a limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
- 8 Undertaking to provide an after-sales service to consumers and then making such service available only in a language which is different to the language used in communication with the consumer for, or prior to, the transaction without clearly disclosing this to the consumer before the consumer committed to the transaction. 5
- 9 Falsely claiming or creating the false impression that an after-sales service is available, including falsely claiming that it is available in, or accessible from, any particular country or location. 10
- 10 Stating or otherwise creating the impression that a product can be legally sold when it cannot.
- 11 Presenting rights given to consumers by law as a distinctive feature of the trader's offer. 15
- 12 Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer.
- 13 Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security or safety of the consumer, a member of the consumer's family or anyone living in the consumer's home, if the consumer does not purchase the product. 20
- 14 Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not. 25
- 15 (1) Establishing, operating or promoting a pyramid promotional scheme.
(2) In sub-paragraph (1), a pyramid promotional scheme means a scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the supply or consumption of products. 30
- 16 Claiming that the trader is about to cease trading or move premises when the trader is not.
- 17 Claiming that products are able to facilitate winning in games of chance. 35
- 18 (1) Falsely claiming that a product is able to—
(a) prevent or treat disease or a malformation,
(b) restore, correct or modify a physiological function, or
(c) modify a person's appearance.
(2) For the purposes of sub-paragraph (1), "disease" includes any injury, ailment or adverse condition, whether of body or mind. 40

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|----|--|----|
| 19 | Providing (including passing on) materially inaccurate information about market conditions or about the availability of the product with the intention of inducing the consumer to acquire the product under conditions that are less favourable than normal market conditions. | |
| 20 | Claiming to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent. | 5 |
| 21 | Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either – | |
| | (a) there is no prize or other equivalent benefit, or | 10 |
| | (b) taking any action in relation to claiming the prize or other equivalent benefit requires the consumer to pay money or incur a cost. | |
| 22 | Describing a product as “gratis”, “free”, “without charge” or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item. | 15 |
| 23 | Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product when the consumer has not. | |
| 24 | Falsely claiming or creating the false impression that the trader is not acting for purposes relating to the trader’s business or falsely representing oneself as a consumer. | 20 |
| 25 | Creating the impression that the consumer cannot leave the premises until a contract is formed. | |
| 26 | Ignoring a request from a consumer to leave or not return to the consumer’s home except in circumstances and to the extent justified to enforce a contractual obligation. | 25 |
| 27 | Making persistent and unwanted solicitations by any means, other than by attending at the consumer’s home, except in circumstances and to the extent justified to enforce a contractual obligation. | |
| 28 | Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to correspondence, in order to dissuade a consumer from exercising the consumer’s contractual rights. | 30 |
| 29 | Including in an advertisement a direct appeal to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. | 35 |
| 30 | Supplying products to a consumer that have not been requested by the consumer and demanding that the consumer – | |
| | (a) pays for the products; | 40 |
| | (b) returns the products; | |
| | (c) safely stores the products. | |

- 31 Explicitly telling a consumer that if the consumer does not buy the product, the trader’s job or livelihood will be at risk.

SCHEDULE 19

Section 247

EXCLUDED CONTRACTS

<i>Utilities</i>	5
1 (1) A contract between an electricity supplier and a consumer for the supply of electricity to any premises.	
(2) A contract between a gas supplier and a consumer for the supply of gas to any premises.	
(3) A contract between a heat supplier and a consumer for the supply of heating, cooling or hot water by means of a relevant heat network.	10
(4) In England and Wales, a contract between a licensed water supplier, or licensed sewerage supplier, and a consumer for the supply of water or sewerage services.	
(5) In Scotland, a contract between a licensed water supplier, or licensed sewerage supplier, and a consumer for the supply of water or sewerage services.	15
(6) In Northern Ireland –	
(a) a contract between a water undertaker and a consumer for the supply of water pursuant to Article 94 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21));	20
(b) a contract between a sewerage undertaker and a consumer for the supply of sewerage services pursuant to Chapter 3 of Part 6 of that Order.	
(7) In this paragraph –	25
“electricity supplier” means a person who is authorised to supply electricity –	
(a) by a licence under Part 1 of the Electricity Act 1989 or Part 2 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)),	30
(b) by virtue of an exemption granted under the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270), or	
(c) by virtue of an exemption granted under the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 (S.I. 2013/93 (N.I. 1));	35
“gas supplier” means a person who is authorised to supply gas –	

- (a) by a licence under Part 1 of the Gas Act 1986 or Part 2 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), or
 - (b) by virtue of the exemption in paragraph 1 of Schedule 2A to the Gas Act 1986; 5
- “heat supplier” means a person who is authorised to supply heating, cooling or hot water by an authorisation conferred under regulations made under Chapter 1 of Part 7 of the Energy Act 2023;
- “licensed sewerage supplier” means—
- (a) in relation to England and Wales, a sewerage licensee within the meaning of the Water Industry Act 1991; 10
 - (b) in relation to Scotland, a person supplying sewerage services under a sewerage services licence within the meaning of the Water Services etc. (Scotland) Act 2005;
- “licensed water supplier” means— 15
- (a) in relation to England and Wales, a water supply licensee within the meaning of the Water Industry Act 1991;
 - (b) in relation to Scotland, a person supplying water under a water services licence within the meaning of the Water Services etc. (Scotland) Act 2005 (asp 3); 20
- “relevant heat network” has the same meaning as in Chapter 1 of Part 7 of the Energy Act 2023;
- “sewerage undertaker” and “water undertaker” have the same meanings as in the Water and Sewerage Services (Northern Ireland) Order 2006. 25

Insurance and financial services

- 2 A contract for services of a banking, credit, insurance, personal pension, investment or payment nature.

Medical prescriptions etc.

- 3 (1) A contract for the supply of goods, services or digital content where the supply— 30
- (a) is made for purposes relating to the prevention, diagnosis or treatment of illness, or otherwise relating to a person’s physical or mental health, and
 - (b) is made— 35
 - (i) under, or in connection with, a prescription or directions given by a prescriber, or
 - (ii) is of a medicinal product which is administered by a prescriber.
- (2) In sub-paragraph (1)— 40
- “illness” means physical or mental illness;

“medicinal product” has the meaning given by regulation 2(1) of the Human Medicines Regulations 2012 (S.I. 2012/ 1916);

“prescriber” –

- (a) in relation to a prescription or directions given, or a medicinal product administered, in England or Wales, has the meaning given by regulation 2(1) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349); 5
- (b) in relation to a prescription or directions given, or a medicinal product administered, in Scotland, has the meaning given by regulation 2 of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009 (S.S.I. 2009/183); 10
- (c) in relation to a prescription or directions given, or a medicinal product administered in Northern Ireland, has the meaning given by the Pharmaceutical Services Regulations (Northern Ireland) 1997 (S.R. (N.I.) 1997 No. 318). 15

4 (1) A contract for the supply of goods, services or digital content by a health care professional or a person included in a relevant list in circumstances where – 20

- (a) the supply of goods, services or digital content is under arrangements for the supply of services as part of the health service, and
- (b) the goods, services or digital content are, at least in some circumstances, supplied under such arrangements free of charge or on prescription. 25

(2) In sub-paragraph (1) –

“health care professional” means a member of a profession which is regulated by –

- (a) a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 but as if subsection (3A) of that section was omitted; 30
- (b) Social Care Wales;
- (c) the Scottish Social Services Council;
- (d) the Northern Ireland Social Care Council; 35

“health service” means the health service or system of health care continued under –

- (a) section 1(1) of the National Health Service Act 2006;
- (b) section 1(1) of the National Health Service (Wales) Act 2006;
- (c) section 1(1) of the National Health Service (Scotland) Act 1978; 40
- (d) section 2(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

“relevant list” means –

- (a) in relation to arrangements which are part of the health service in England and Wales—
 - (i) a relevant list for the purposes of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (S.I. 2013/349) (see regulation 2(1)); 5
 - (ii) a list maintained under those regulations;
- (b) in relation to arrangements which are part of the health service in Scotland, the pharmaceutical list prepared under regulation 5 of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009 (S.S.I. 2009/183); 10
- (c) in relation to arrangements which are part of the health service in Northern Ireland, the pharmaceutical list prepared under regulation 6 of the Pharmaceutical Services Regulations (Northern Ireland) 1997 (S.R. (N.I.) 1997 No. 318). 15

Contracts regulated by OFCOM

- 5 A contract for the supply of goods, services or digital content by a person who is bound, in relation to that supply, by a general condition set by OFCOM under section 45 of the Communications Act 2003.
- 6 (1) A contract for the supply of a premium rate service by a person who is bound, in relation to the supply of that service, by conditions set by OFCOM under section 120 of the Communications Act 2003. 20
 - (2) In sub-paragraph (1), “premium rate service” has the meaning given by section 120(7) of the Communications Act 2003.
- 7 In paragraphs 5 and 6, “OFCOM” means the Office of Communications. 25

Rent of residential accommodation

- 8 A contract under which accommodation is rented for residential purposes.

Delivery of foodstuffs etc. by unincorporated trader

- 9 (1) A contract between a trader who is not a body corporate and a consumer for the supply of foodstuffs, beverages or other goods intended for current consumption in the household where the condition in sub-paragraph (2) or (3) is met. 30
 - (2) The condition is that the foodstuffs, beverages or other goods—
 - (a) are to be supplied by way of a frequent or regular delivery to the consumer’s home, residence or workplace, and 35
 - (b) are not to be delivered wholly or mainly by a third party.
 - (3) The condition is that the foodstuffs, beverages or other goods are to be supplied by way of the consumer collecting the goods from the trader’s business premises.

- (4) For the purposes of sub-paragraph (2)(b) goods are delivered by a third party if they are delivered by a person acting for purposes relating to a business other than the trader’s business.

Package holidays etc

- 10 A package travel contract within the meaning of the Package Travel and Linked Travel Arrangements Regulation 2018 (S.I. 2018/634). 5

Timeshares etc

- 11 A contract which is a regulated contract within the meaning of the Timeshare, Holiday Products Resale and Exchange Contracts 2010 (S.I. 2010/2960). 10

Childcare (including school age education)

- 12 (1) A contract for the supply of goods, services or digital content for, or in connection with, the provision of childcare by a relevant childcare provider.
- (2) In relation to the provision of childcare in England and Wales, a “relevant childcare provider” means – 15
- (a) a person who –
- (i) in relation to England, is registered, or required to be registered, under Part 3 of the Childcare Act 2006 in relation to the childcare provided;
 - (ii) in relation to England, is not required to register under that Part in relation to the childcare provided because the childcare is excepted from the definition of “childcare” in section 18 of that Act; 20
 - (iii) in relation to England, is not required to register under that Part in relation to the childcare provided as a result of Article 2 of the Childcare (Exemptions from Registration) Order 2008 (S.I. 2008/979) by reference to the circumstances specified in Article 3, 5 or 8 of that Order; 25
 - (iv) in relation to Wales, is registered, or required to be registered, under Part 2 of the Children and Family (Wales) Measure 2010 (nawm 1); 30
 - (v) in relation to Wales, is not required to register under that Part because the person is not acting as a child minder, or is not providing day care, for the purposes of that Part by virtue of an Order made under section 19 of that Measure; 35
- (b) the governing body of a maintained school;
- (c) the proprietor of an Academy school or an Alternative provision Academy;
- (d) the proprietor of a school that is approved under section 342 of the Education Act 1996 (non-maintained special schools); 40

- (e) the proprietor of any educational institution not falling within paragraph (c) that is registered under section 95 of the Education and Skills Act 2008 (register of independent educational institutions).
- (3) In relation to the provision of childcare in Scotland, a “relevant childcare provider” means— 5
- (a) a person who—
- (i) is registered, or required to be registered, under Part 5 of the Public Services Reform (Scotland) Act 2010 (asp 8) in relation to the childcare provided;
- (ii) is not required to register under that Part in relation to the childcare provided because that childcare is excepted from the definition of a care service by Schedule 12 to that Act or by regulations made under that Schedule; 10
- (b) an education authority acting in its role as manager of a public school; 15
- (c) the proprietor of an independent school;
- (d) the managers of a grant-aided school.
- (4) In relation to the provision of childcare in Northern Ireland, a “relevant childcare provider” means—
- (a) a person who— 20
- (i) is registered, or required to be registered, under Part 11 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2));
- (ii) is not required to register under that Part in relation to the childcare provided because the person is not acting as a childminder when carrying out that childcare by virtue of Article 119 of that Order, or is not providing day care for children when carrying out that childcare by virtue of Article 120 of that Order; 25
- (iii) is not required to register under that Part in relation to the childcare provided because of an exemption under Article 121 of that Order; 30
- (b) the Board of Governors of a grant-aided school;
- (c) the proprietor of an independent school.
- (5) In this paragraph— 35
- “Academy school” has the meaning given by section 1A of the Academies Act 2010;
- “Alternative provision Academy” has the meaning given by section 1C of the Academies Act 2010;
- “Board of Governors” has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)); 40
- “child” means a person under the age of 18;
- “childcare” means any form of care for a child, including—
- (a) education for a child, and

- (b) any other supervised activity for a child;
- “education authority” has the meaning given by section 135(1) of the Education (Scotland) Act 1980;
- “governing body”, in relation to a maintained school, means the governing body referred to in relation to the school in section 19 of the Education Act 2002; 5
- “grant-aided school” –
 - (a) in relation to Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980;
 - (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the of the Education and Libraries (Northern Ireland) Order 1986; 10
- “independent school” –
 - (a) in relation to Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980; 15
 - (b) in relation to Northern Ireland, has the meaning given by Article 2(2) of the of the Education and Libraries (Northern Ireland) Order 1986;
- “maintained school” means –
 - (a) a community, foundation or voluntary school (within the meaning of the School Standards and Framework Act 1998); 20
 - (b) a community or foundation special school (within the meaning of that Act);
 - (c) a maintained nursery school (as defined by section 22(9) of that Act); 25
- “proprietor” –
 - (a) in relation to a maintained school, has the meaning given by section 579(1) of the Education Act 1996;
 - (b) in relation to an educational institution registered under section 95 of the Education and Skills Act 2008, has the meaning given by section 138(1) of that Act; 30
 - (c) in relation to an independent school in Scotland, has the meaning given by section 135(1) of the Education (Scotland) Act 1980;
 - (d) in relation to an independent school in Northern Ireland, has the meaning given by Article 2(2) of the of the Education and Libraries (Northern Ireland) Order 1986; 35
- “public school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.

SCHEDULE 20

Section 248

PRE-CONTRACT INFORMATION AND REMINDER NOTICES

PART 1

KEY PRE-CONTRACT INFORMATION

- | | | |
|---|--|----|
| 1 | The information referred to in section 248(1)(a) is as follows. | 5 |
| 2 | If section 246(2) applies to the contract – | |
| | (a) that the contract will continue, or continue for a fixed term, unless the consumer takes steps to bring the contract to an end, or to an earlier end, | |
| | (b) that until the contract comes to an end the consumer will continue to incur liabilities under the contract, and | 10 |
| | (c) any minimum period that must elapse before the consumer can bring the contract to an end. | |
| 3 | If section 246(3) applies to the contract – | |
| | (a) that the consumer will be charged, or charged at a higher rate, for the supply of goods, services or digital content unless the consumer takes steps to bring the contract to an end before liability for any charge, or higher charge, is incurred by the consumer, and | 15 |
| | (b) the date on which the consumer will become liable for the first charge, or first higher charge. | 20 |
| 4 | The frequency with which the consumer will become liable for payments under the contract and the minimum amount that the consumer will become liable for on each occasion, or how that amount is to be calculated if the amount cannot reasonably be calculated in advance. | |
| 5 | If different to the information referred to in paragraph 4, the amount that the consumer would become liable for each month if payments under the contract fell due monthly. | 25 |
| 6 | The minimum total amount for which the consumer will become liable under the contract. | |
| 7 | Whether the contract provides for – | 30 |
| | (a) any changes to the frequency or the amount of payments that the consumer will become liable for under the contract, or | |
| | (b) any option under the contract for the trader to change the frequency or amount of those payments, | |
| | and if it does, the detail of those changes or that option. | 35 |
| 8 | The steps that the consumer must take to bring the contract to an end including any address (including a website or email address) or other contact details the consumer may need in order to take those steps. | |
| 9 | The amount of notice that the consumer must give to bring the contract to an end. | 40 |

- 10 A summary of—
- (a) the consumer’s right to cancel the contract during the initial cooling-off period (or if the consumer may lose that right, that information), and
 - (b) any right the consumer has to cancel during a renewal cooling-off period,
- and the fact that further details about the rights are set out in the full pre-contract information. 5

PART 2

FULL PRE-CONTRACT INFORMATION 10

- 11 The information referred to in section 248(1)(b) is as follows.
- 12 The information set out in Part 1 of this Schedule.
- 13 The main characteristics of the goods, services or digital content, to the extent appropriate to the medium of communication and to the nature of the goods, services or digital content. 15
- 14 (1) The identity of the trader and the identity of any other person on whose behalf the trader is acting.
- (2) For the purposes of sub-paragraph (1), “identity” in relation to a trader, means—
- (a) the name of the trader, and 20
 - (b) if different, the name under which the trader trades.
- 15 (1) The business address and, if different, the service address of the trader, and any business email address and business telephone number of the trader.
- (2) For the purposes of sub-paragraph (1) and paragraph 16— 25
- “business address”, in relation to a person, means—
- (a) where the person is a body corporate, the address of its registered or principal office,
 - (b) where the person is a firm that is not a body corporate, the address of the principal office of the firm, 30
 - (c) in a case where neither paragraphs (a) or (b) apply, the address of the person’s principal place of business;
- “business email address”, in relation to a person, means any email address used by the trader for conducting business;
- “business telephone number”, in relation to a person, means any 35
- telephone number used by the trader for conducting business;
- “service address”, in relation to a person, means the address at which the person will accept service of documents.
- 16 In relation to any other person on whose behalf the trader is acting—

-
- (a) the person’s business address, business email address and business telephone address (if the person has such addresses or such a number), and
- (b) if different to the person’s business address, the person’s service address. 5
- 17 All additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable.
- 18 The arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods, to perform the services or to supply the digital content. 10
- 19 The trader’s complaint handling policy.
- 20 The following information about the consumer’s right to cancel the subscription contract during the initial cooling-off period – 15
- (a) when that period begins and ends;
- (b) how the consumer may exercise the right;
- (c) if the consumer may lose the right, the circumstances under which that will happen;
- (d) the consequences of the consumer exercising the right, including – 20
- (i) any refund the consumer may be entitled to,
- (ii) any reason that refund might be diminished, and
- (iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader, including the likely cost of returning the goods if they cannot normally be returned by post. 25
- 21 The following information about any right the consumer has to cancel the subscription contract during a renewal cooling-off period – 30
- (a) when the first renewal cooling-off period will begin and end;
- (b) whether there will be further renewal cooling-off periods and, if so, when each will begin and end;
- (c) how the consumer may exercise the right;
- (d) if the consumer may lose that right, the circumstances under which that will happen;
- (e) the consequences of the consumer exercising the right, including – 35
- (i) any refund the consumer may be entitled to,
- (ii) any reason that refund might be diminished,
- (iii) in respect of a contract for the supply of goods, whether the consumer will be responsible for returning those goods to the trader.
- 22 A reminder of the statutory rights of the consumer under Part 1 of the Consumer Rights Act 2015. 40
- 23 (1) The existence and conditions of after-sale customer assistance, after-sales services and commercial guarantees.

- (2) In sub-paragraph (1), “commercial guarantee”, in relation to a contract, means any undertaking by the trader or producer to the consumer (in addition to the trader’s duty to supply goods that are in conformity with the contract) to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of the contract or before it is entered into. 5
- 24 (1) The existence of relevant codes of conduct and how copies of them can be obtained. 10
- (2) In sub-paragraph (1), “code of conduct” has the meaning it has in section 241.
- 25 The existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader.
- 26 (1) The functionality, including applicable technical protection measures, of digital content and any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of. 15
- (2) In sub-paragraph (1), “functionality”, in relation to digital content, includes region coding, restrictions incorporated for the purposes of digital rights management, and other technical restrictions. 20
- 27 The possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

PART 3

25

REMINDER NOTICES

- 28 The information referred to in section 251(1)(a) (information that must be contained in a reminder notice) is as follows.
- 29 That the consumer will become liable for the renewal payment to which the notice relates unless the consumer takes steps to bring the contract to an end. 30
- 30 The date (“the renewal date”) on which the consumer will become liable for the renewal payment and its amount.
- 31 The amount of the previous renewal payment for which the consumer became liable under the contract (if any). 35
- 32 If the renewal payment to which the notice relates is a higher amount than that previous renewal payment, that information and the difference in the amount.

- 33 If, having not brought the contract to an end before the renewal date, the consumer will become automatically liable for one or more further payments under the contract (ignoring any subsequent renewal payment) –
- (a) the frequency with which the consumer will become liable for those payments, and 5
 - (b) the minimum amount that the consumer will become liable for on each occasion (or how that amount is to be calculated if it cannot reasonably be calculated in advance).
- 34 The amount of any payments equivalent to those mentioned in paragraph 33 for which the consumer became liable after the previous renewal payment. 10
- 35 If the payments mentioned in paragraph 33 are (or may be) of a higher amount than any equivalent payments for which the consumer became liable after the previous renewal payment, that information and the difference in the amount (or the difference in how the amount will be calculated). 15
- 36 The minimum total amount for which the consumer will become liable under the contract if the consumer does not bring the contract to an end before the renewal date (ignoring any liability that has arisen, or will arise, before that date), or how that amount is to be calculated if the amount cannot reasonably be calculated in advance. 20
- 37 The date on which the consumer will become liable for the next renewal payment, or if the consumer will not become liable for any further renewal payment, the date on which the contract will come to an end.
- 38 The steps that the consumer may take to bring the subscription contract to an end so as to avoid becoming liable for any further payment under the contract, including –
- (a) any address (including a website or email address) or other contact details the consumer may need in order to take those steps, and
 - (b) the date by which any steps must be taken so as to avoid that liability. 30

SCHEDULE 21

Section 276

EXCLUDED ARRANGEMENTS

Regulated financial services activity

- 1 (1) A contract between a consumer and a trader where – 35
- (a) the contract is entered into by the trader in the course of carrying on a regulated financial services activity, and
 - (b) the trader is authorised to carry on that activity.
- (2) In sub-paragraph (1)(a), a regulated financial services activity means –

- (a) a regulated activity for the purposes of section 19 of the Financial Services and Markets Act 2000;
 - (b) a payment service within the meaning of regulation 2(1) of the Payment Services Regulations 2017 (S.I. 2017/752);
 - (c) the issue of electronic money. 5
- (3) For the purposes of sub-paragraph (1)(b), a person is authorised to carry on a regulated financial services activity if—
- (a) the person is an authorised person in relation to the activity for the purposes of section 19 of the Financial Services and Markets Act 2000; 10
 - (b) the person is exempt from the general prohibition in relation to the activity under section 39(1) of that Act;
 - (c) the person is a payment service provider and the activity is a payment service for which the person is authorised or registered under Part 2 of the Payment Services Regulations 2017; 15
 - (d) the person is an electronic money issuer and the activity is the issue of electronic money for which the person is authorised or registered under Part 2 of the Electronic Money Regulations 2011 (S.I. 2011/99).
- (4) In this paragraph—
- “electronic money” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011 (and references to the issue of electronic money are to be construed in accordance with those regulations); 20
 - “electronic money issuer” has the meaning given in regulation 2(1) of those Regulations; 25
 - “the general prohibition” has the same meaning as in the Financial Services and Markets Act 2000 (see section 19(2) of that Act);
 - “payment service provider” has the meaning given in regulation 2(1) of the Payment Services Regulations 2017.

Arrangements for the supply of utilities 30

- 2 (1) Arrangements for—
- (a) the supply of water under a relevant duty to supply water;
 - (b) the supply of electricity under an electricity supply licence;
 - (c) the supply of gas under a gas supply licence;
 - (d) the supply of heating, cooling or hot water by means of a relevant heat network under a heat network authorisation. 35
- (2) In this paragraph—
- “electricity supply licence” means a licence granted under section 6 of the Electricity Act 1989 or Article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I.1)); 40
 - “gas supply licence” means a licence granted under section 7A(1) of the Gas Act 1986 or Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I.2));

“heat network authorisation” means an authorisation conferred under regulations made under section 168 of the Energy Act 2023;	
“relevant duty to supply water” means the duty imposed by –	
(a) section 52 of the Water Industry Act 1991;	
(b) Article 91 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21));	5
(c) section 6 of the Water (Scotland) Act 1980;	
“relevant heat network” has the same meaning as in Chapter 1 of Part 7 of the Energy Act 2023 (see section 165 of that Act).	
<i>Small businesses</i>	10
3 (1) A contract between a consumer and a trader where –	
(a) the trader’s turnover in the trader’s last financial year was less than £1,000,000, and	
(b) the trader does not enter into consumer savings scheme contracts which result in an account held by a trader for a consumer being credited with funds of more than £120 at any given time.	15
(2) Where a trader is in their first year of trading, the exclusion in this paragraph applies if the test in sub-paragraph (1)(b) alone is satisfied.	
<i>Childcare voucher schemes</i>	
4 A contract between a consumer and a trader where the contract is entered into by a trader in the course of providing childcare vouchers within the meaning given in section 84 of the Income Tax (Earnings and Pensions) Act 2003 for the purposes of a scheme to which section 270A of that Act applies.	20
<i>Package holidays etc.</i>	25
5 A package travel contract within the meaning of the Package Travel and Linked Travel Arrangements Regulation 2018 (S.I. 2018/634).	

SCHEDULE 22

Section 287

EXEMPT ADR PROVIDERS

PART 1

30

THE EXEMPT PROVIDERS

1 The following persons are exempt ADR providers –	
The Consumer Council for Water.	
The Financial Ombudsman Service.	
The Health Service Commissioner for England.	35

The independent person and the scheme administrator under a qualifying redress scheme for the gas or electricity sector.	
The Legal Ombudsman.	
The Northern Ireland Public Services Ombudsman.	
The ombudsman and the scheme administrator under an approved estate agents redress scheme.	5
The Pensions Ombudsman.	
The person administering an approved postal operators redress scheme.	
The person administering arrangements under which approved public communications provider dispute procedures have effect.	10
The Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru.	
The Scottish Legal Complaints Commission.	
The Scottish Public Services Ombudsman.	15

PART 2

SUPPLEMENTARY

2	In Part 1—	
	“approved estate agents redress scheme” means an approved redress scheme within the meaning of section 23A of the Estate Agents Act 1979;	20
	“approved postal operators redress scheme” means an approved redress scheme for investigating and determining complaints about postal operators (see section 52 of the Postal Services Act 2011);	
	“approved public communications provider dispute procedures” means dispute procedures maintained by public communications providers that are approved under section 54 of the Communications Act 2003 for the purposes of section 52(5) of that Act;	25
	“qualifying redress scheme for the gas or electricity sector” means a redress scheme which is approved as mentioned in section 47(1)(a), or is administered and designated as mentioned in section 47(1)(b), of the Consumers, Estate Agents and Redress Act 2007.	30

SCHEDULE 23

Section 292

ACCREDITATION CRITERIA

PART 1

THE CRITERIA APPLICABLE TO AN ACCREDITED ADR PROVIDER

- | | | |
|---|---|----|
| | <i>Criterion 1: information for consumers</i> | 5 |
| 1 | (1) The ADR provider provides consumers generally with accessible information about the ADR that it carries out or for which it makes special ADR arrangements. | |
| | (2) The information provided should include (among other things) information about— | 10 |
| | (a) the kinds of ADR it carries out or for which it makes special ADR arrangements (including the possible outcomes of each kind); | |
| | (b) the types of dispute it deals with (whether by carrying out ADR or making special ADR arrangements); | |
| | (c) the procedures adopted in relation to ADR carried out by it or for which it makes special ADR arrangements; | 15 |
| | (d) any fees or costs payable by either party to a dispute that is referred for ADR. | |
| | <i>Criterion 2: readiness to carry out ADR</i> | |
| 2 | The ADR provider does not unreasonably refuse to carry out ADR or, as the case may be, to make special ADR arrangements, in relation to disputes referred to it. | 20 |
| | <i>Criterion 3: expertise</i> | |
| 3 | The ADR provider has sufficient expertise for carrying out ADR or, as the case may be, for making special ADR arrangements, in relation to the types of dispute it deals with. | 25 |
| | <i>Criterion 4: facilities for consumers and traders to participate</i> | |
| 4 | (1) The ADR provider provides accessible means for consumers to refer disputes to it. | |
| | (2) The ADR provider or, as the case may be, any other ADR provider with whom it makes special ADR arrangements, ensures there are accessible means for the parties to participate in the ADR carried out in relation to their dispute. | 30 |

Criterion 5: fair ADR procedures

- 5 (1) The ADR provider or, as the case may be, any other ADR provider with whom it makes special ADR arrangements, adopts and follows fair procedures in carrying out ADR.
- (2) The procedures adopted should, in particular, be easy to use, transparent, non-discriminatory and effective. 5
- (3) They should include procedures for securing that each party to a dispute referred for ADR –
- (a) has a reasonable opportunity –
- (i) to express its point of view in relation to the matters in dispute and the outcome it seeks; 10
- (ii) to consider the views, arguments and evidence put forward by the other party;
- (b) is entitled to be represented or assisted by another person (and that it is immaterial whether or not that person is legally qualified). 15

Criterion 6: independence and impartiality

- 6 (1) The ADR provider or, as the case may be, any other ADR provider with whom it makes special ADR arrangements, acts independently and impartially before, and while, it carries out ADR.
- (2) The action to be taken should include – 20
- (a) following appropriate procedures for identifying, and avoiding, any conflict of interest before carrying out ADR in relation to a dispute;
- (b) taking steps to avoid conflicts of interest that may arise before, or while, it carries out ADR in relation to a dispute.

Criterion 7: information for parties 25

- 7 (1) The ADR provider or, as the case may be, any other ADR provider with whom it makes special ADR arrangements keeps the parties to a dispute informed about the conduct and progress of any ADR being carried out.
- (2) The action to be taken includes notifying the parties promptly in writing of the outcome of the ADR and, where applicable, of the grounds on which any decision has been reached. 30

PART 2

SUPPLEMENTARY

- 8 The following provisions have effect for the interpretation or application of this Schedule. 35
- 9 The accreditation criteria only apply to the ADR provider so far as it is reasonable to regard them as applicable –

- (a) in relation to ADR of a kind that is carried out by the ADR provider or, as the case may be, by any other ADR provider with whom the ADR provider makes special ADR arrangements, or
- (b) in relation to activities of the ADR provider in, or in connection with, making special ADR arrangements. 5
- 10 “Procedures”, in relation to ADR, means any rules, requirements or practices relating to the carrying out of ADR, including—
- (a) any time limits for referring disputes for ADR;
- (b) any conditions or other requirements to be met by either (or both) of the parties before, or while, ADR is being carried out; 10
- 11 “Dispute” means a consumer contract dispute.

SCHEDULE 24

Section 300

CHAPTER 4 OF PART 4: CONSEQUENTIAL AMENDMENTS ETC

Financial Services and Markets Act 2000

- 1 In Schedule 17 to the Financial Services and Markets Act 2000 (ombudsman scheme), omit the following provisions— 15
- (a) in paragraph 1, the definition of “ADR entity”;
- (b) paragraph 2(2);
- (c) paragraph 14(3A).

Consumer Rights Act 2015

20

- 2 (1) Schedule 5 to CRA 2015 (investigatory powers etc) is amended as follows.
- (2) In the table in paragraph 11 (enforcer’s legislation: duties and powers mentioned in paragraph 9(1)(b)), at the appropriate place insert—

“The Secretary of State Chapter 4 of Part 4 of the Digital Markets,
Competition and Consumers Act 2023”

25

Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (SI 2015/542)

- 3 The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (SI 2015/542) are revoked.

SCHEDULE 25

Section 308

PROVISION OF INVESTIGATIVE ASSISTANCE TO OVERSEAS REGULATORS

Amendments to Part 3 of EA 2002

- 1 Chapter 5 of Part 3 of EA 2002 (mergers: supplementary) is amended as follows. 5
- 2 In section 110A (restriction on powers to impose penalties under section 110), after subsection (9) insert—
 - “(10) Where the section 109 power is exercised for the purposes of providing assistance to an overseas regulator (see Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023), the relevant day is the earlier of— 10
 - (a) in the case of a penalty imposed by virtue of section 110(1)(a), the day on which the CMA gives notice to the relevant person that—
 - (i) the information or documents specified or described 15 in the notice under section 109 have been produced or supplied to the satisfaction of the CMA, or
 - (ii) the relevant person has appeared as a witness in accordance with the requirements of the CMA;
 - (b) in the case of a penalty imposed by virtue of section 20 110(1)(b), the day on which the CMA gives notice to the relevant person that the CMA considers the obstruction or delay to have ceased; and
 - (c) in either case, the day one year on from the day specified in the notice under section 109 for the relevant person to 25 comply with it.
 - (11) In subsection (10), “the relevant person” means the person given the notice under section 109.”
- 3 In section 111 (penalties: amount) (as amended by paragraph 17 of Schedule 8), in subsection (5), in paragraph (b)— 30
 - (a) in the words before sub-paragraph (i), after “at the beginning of” insert “the earliest of the following days”;
 - (b) omit the “or” at the end of sub-paragraph (i);
 - (c) in sub-paragraph (ii) omit “if earlier”;
 - (d) after that sub-paragraph insert— 35
 - “(iii) in a case where the penalty is imposed in connection with the provision by the CMA of assistance to an overseas regulator (see Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023), the day on which the overseas regulator no longer requires that assistance.” 40

- 4 (1) Section 120 (reviews of decisions under Part 3) is amended as follows.
- (2) In subsection (1A), after paragraph (b) insert—
- “(c) a decision of the CMA or the Secretary of State for the purposes of Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023 in connection with a request from an overseas regulator (within the meaning of that Chapter) for the CMA to assist the regulator in carrying out functions of the regulator which correspond or are similar to the functions of the CMA under this Part.”
- (3) In subsection (2), in paragraph (b)—
- (a) the words after “permitted or required by” become sub-paragraph (i);
- (b) after that sub-paragraph insert—
- “(ii) Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023 in connection with a request from an overseas regulator (within the meaning of that Chapter) for the CMA to assist the regulator in carrying out functions of the regulator which correspond or are similar to the functions of the CMA under this Part.”

Amendment to Part 9 of EA 2002

- 5 In Part 9 of EA 2002 (information), in section 243E (directions by the Secretary of State relating to overseas disclosures) (inserted by section 309(2)), after subsection (2) insert—
- “(2A) The Secretary of State may not make a direction under this section in relation to a disclosure permitted under section 243A or 243B that relates to assistance provided by a relevant regulator to an overseas regulator by virtue of Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023.”

Amendments to CA 1998

- 6 CA 1998 is amended as follows.
- 7 (1) Section 25A (power of CMA to publish notice of investigation) is amended as follows.
- (2) In the heading, at the end insert “etc”.
- (3) After subsection (1) insert—
- “(1A) Where the CMA assists an overseas regulator in carrying out any of its functions which correspond or are similar to the functions of the CMA under this Part (see Chapter 1 of Part 5 of the Digital

- Markets, Competition and Consumers Act 2023), the CMA may publish a notice which may, in particular –
- (a) state its decision to do so;
 - (b) identify the overseas regulator concerned;
 - (c) summarise the matter in respect of which the assistance is to be provided; 5
 - (d) identify any undertaking in respect of which the assistance is to be provided;
 - (e) identify the market which is or was affected by the matter in respect of which the assistance is to be provided.” 10
- (4) In subsection (2) –
- (a) after “subsection (1)” insert “or (1A)”; 5
 - (b) for “that subsection” substitute “the subsection concerned”.
- 8 (1) Section 25B (duty to preserve documents relevant to investigations) (inserted by section 117) is amended as follows. 15
- (2) In subsection (1) –
- (a) the words after “knows or suspects that” become paragraph (a);
 - (b) after that paragraph insert “, or
 - “(b) the CMA is assisting, or is likely to assist, an overseas regulator in carrying out any of its functions which correspond or are similar to the functions of the CMA under this Part (see Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023).”;
- (3) In subsection (2), at the end insert “or to the provision of such assistance”.
- 9 In section 40A (penalties: amount), in subsection (7), after paragraph (c) insert – 25
- “(d) in a case where the requirement was imposed in connection with the provision by the CMA of assistance to an overseas regulator (see Chapter 1 of Part 5 of the Digital Markets, Competition and Consumers Act 2023), the day on which the overseas regulator no longer requires that assistance.” 30

SCHEDULE 26

Section 310

DUTY OF EXPEDITION ON SECTORAL REGULATORS IN RESPECT OF THEIR COMPETITION FUNCTIONS

The Civil Aviation Authority (CAA)

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- 1 (1) The Civil Aviation Act 2012 is amended as follows.

- (2) In section 61 (functions of the CAA under Part 4 of the Enterprise Act 2002: supplementary), after subsection (11) insert –
- “(12) In making any decision, or otherwise taking action, for the purposes of any relevant 2002 Act functions, the CAA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.” 5
- (3) In section 63 (functions of the CAA under the Competition Act 1998: supplementary), after subsection (3) insert –
- “(3A) In making any decision, or otherwise taking action, for the purposes of any relevant 1998 Act functions that are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule, the CAA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.” 10
- 2 In section 86 of the Transport Act 2000 (functions of the CAA with respect to competition) after subsection (7) insert – 15
- “(8) In making any decision, or otherwise taking action, for the purposes of any of its functions that –
- (a) by virtue of this section, are functions exercisable concurrently with the CMA, and 20
- (b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,
- the CAA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.” 25

The Financial Conduct Authority (FCA)

- 3 (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 234I (functions of the FCA under Part 4 of EA 2002), after subsection (8) insert – 30
- “(9) In making any decision, or otherwise taking action, for the purposes of any of its functions that, by virtue of this section, are functions exercisable concurrently with the CMA, the FCA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.” 35
- (3) In section 234J (functions of the FCA under CA 1998), after subsection (5) insert –
- “(6) In making any decision, or otherwise taking action, for the purposes of any of its functions that –
- (a) by virtue of this section, are functions exercisable concurrently with the CMA, and 40

- (b) are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,
the FCA must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

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The Northern Ireland Authority for Utility Regulation

- 4 In Article 29 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition), after paragraph (10) insert –

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“(11) In making any decision, or otherwise taking action, for the purposes of any of its functions that –

(a) by virtue of this Article, are functions exercisable concurrently with the CMA, and

(b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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the Authority must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

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- 5 In Article 23 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition), after paragraph (9) insert –

“(10) In making any decision, or otherwise taking action, for the purposes of any of its functions that –

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(a) by virtue of this Article, are functions exercisable concurrently with the CMA, and

(b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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the Authority must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

- 6 In Article 46 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (functions of the Northern Ireland Authority for Utility Regulation with respect to competition), at the end insert –

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“(8) In making any decision, or otherwise taking action, for the purposes of any of its functions that –

(a) by virtue of this Article, are functions exercisable concurrently with the CMA, and

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(b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and

Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

the Authority must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

The Office of Communications (OfCOM)

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7 (1) The Communications Act 2003 is amended as follows.

(2) In section 370 (functions of OfCOM under Part 4 of EA 2002), after subsection (12) insert—

“(13) In making any decision, or otherwise taking action, for the purposes of any of its functions that, by virtue of this section, are functions exercisable concurrently with the CMA, OfCOM must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

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(3) In section 371 (functions of OfCOM under CA 1998), after subsection (12) insert—

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“(13) In making any decision, or otherwise taking action, for the purposes of any of its functions that—

(a) by virtue of this section, are functions exercisable concurrently with the CMA, and

(b) are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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OfCOM must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

The Office of Gas and Electricity Markets (Ofgem)

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8 In section 36A of the Gas Act 1986 (functions of Ofgem with respect to competition), after subsection (10) insert—

“(11) In making any decision, or otherwise taking action, for the purposes of any of its functions that—

(a) by virtue of this section, are functions exercisable concurrently with the CMA, and

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(b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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the Authority must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

9 In section 43 of the Electricity Act 1989 (functions of Ofgem with respect to competition) at the end insert—

“(8) In making any decision, or otherwise taking action, for the purposes of any of its functions that, by virtue of this section—

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- (a) by virtue of this section, are functions exercisable concurrently with the CMA, and
- (b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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the Authority must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

The Office of Rail and Road (ORR)

- 10 In section 67 of the Railways Act 1993 (functions of the ORR with respect to competition) at the end insert – 10

“(11) In making any decision, or otherwise taking action, for the purposes of any of its functions that –

- (a) by virtue of this section, are functions exercisable concurrently with the CMA, and
- (b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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the Office of Rail and Road must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

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The Payment Systems Regulator

- 11 (1) The Financial Services (Banking Reform) Act 2013 is amended as follows.

- (2) In section 59 (functions of the Payment Systems Regulator under Part 4 of EA 2002), after subsection (6) insert – 25

“(7) In making any decision, or otherwise taking action, for the purposes of any of its functions that, by virtue of this section, are functions exercisable concurrently with the CMA, the Payment Systems Regulator must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.” 30

- (3) In section 61 (functions of the Payment Systems Regulator under CA 1998), after subsection (5) insert –

“(6) In making any decision, or otherwise taking action, for the purposes of any of its functions that –

- (a) by virtue of this section, are functions exercisable concurrently with the CMA, and
- (b) are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule,

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the Payment Systems Regulator must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.”

The Water Services Regulation Authority (Ofwat)

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|----|---|----|
| 12 | In section 31 of the Water Industry Act 1991 (functions of Ofwat with respect to competition) at the end insert – | 5 |
| | “(10) In making any decision, or otherwise taking action, for the purposes of any of its functions that – | |
| | (a) by virtue of this section, are functions exercisable concurrently with the CMA, and | 10 |
| | (b) in the case of functions under the Competition Act 1998, are functions within Schedule 4A to the Enterprise and Regulatory Reform Act 2013 by virtue of paragraph 5 of that Schedule, | |
| | the Authority must have regard to the need for making a decision, or taking action, as soon as reasonably practicable.” | 15 |

Digital Markets, Competition and Consumers Bill

[AS INTRODUCED]

A

B I L L

TO

Provide for the regulation of competition in digital markets; to amend the Competition Act 1998 and the Enterprise Act 2002 and to make other provision about competition law; to make provision relating to the protection of consumer rights and to confer further such rights; and for connected purposes.

*Presented by Secretary Kemi Badenoch
supported by the Prime Minister,
the Chancellor of the Exchequer,
Secretary Michelle Donelan, Secretary Lucy Frazer,
Kevin Hollinrake, Paul Scully and Julia Lopez.*

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