



Department for  
Business, Energy  
& Industrial Strategy

# Draft Horizontal Agreements Block Exemption Orders

Government response to consultation

December 2022



© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: [competition@beis.gov.uk](mailto:competition@beis.gov.uk)

---

# Contents

Executive summary	4
Specialisation Agreements Block Exemption Order	6
R&D Agreements Block Exemption Order	7

# Executive summary

## Introduction

- 0.1 The Horizontal Agreements Block Exemption Orders (HBEOs) will give effect to the recommendation<sup>1</sup> by the Competition and Markets Authority (CMA) that certain horizontal agreements should be exempted from the prohibition of agreements between firms that prevent, restrict or distort competition.
- 0.2 The HBEOs will ensure that businesses operating in the UK are not prevented or disincentivised from entering into agreements that the CMA considers to be overall beneficial and not anticompetitive. By enabling businesses to engage in beneficial and pro-competitive activities, the block exemptions benefit consumers (for example through the developments of new products). They will also introduce certain amendments to the current regime tailored to the needs of UK consumers and businesses.

## Specialisation Agreements Block Exemption Order

- 0.3 The Specialisation Agreements Block Exemption Order 2022 (SABEO) will exempt joint production agreements, unilateral specialisation agreements and reciprocal specialisation agreements which concern the manufacture of goods or the preparation of services as these agreements have the potential to improve production processes and lower costs which can lead to lower prices for consumers.
- 0.4 The SABEO replaces a similar block exemption, the retained Specialisation Block Exemption Regulation (retained SBER)<sup>2</sup>, which was made under EU law and retained in UK law after the UK's withdrawal from the EU. The retained SBER expires on 31 December 2022.

## R&D Agreements Block Exemption Order

- 0.5 The Research and Development Agreements Block Exemption Order 2022 (R&D BEO) will exempt R&D agreements which can facilitate early breakthroughs in research and product development and support more efficient resource allocation through collaborative R&D.
- 0.6 The R&D BEO replaces a similar block exemption, the retained R&D Block Exemption Regulation (retained R&D BER)<sup>3</sup>, which was made under EU law and retained in UK law

---

<sup>1</sup> <https://www.gov.uk/government/consultations/retained-horizontal-block-exemption-regulations-rd-and-specialisation-agreements-consultation>

<sup>2</sup> <https://www.legislation.gov.uk/eur/2010/1218/contents>

<sup>3</sup> <https://www.legislation.gov.uk/eur/2010/1217/contents>

after the UK's withdrawal from the EU. The retained R&D BER expires on 31 December 2022.

## Technical consultation

- 0.7 The Department for Business, Energy and Industrial Strategy (BEIS) launched a technical consultation on the legal drafting of the Orders in September 2022.<sup>4</sup> This consultation ran from 20 September 2022 to 7 October 2022 and sought views on the draft HBEOs to make sure they deliver the policy correctly and effectively. One written response was received from a competition lawyer, in addition to further engagement with stakeholders and the CMA.
- 0.8 Respondents welcomed the introduction of the SABEO and the R&D BEO and the opportunity to provide comments on its draft. While generally content that the order achieved the intended outcome, certain improvements to the drafting were proposed. This response outlines the amendments to the draft orders made in response to the feedback received.
- 0.9 This response does not comment on issues of policy addressed by the CMA's recommendation which has been accepted in full by the Secretary of State.

## Next steps

- 0.10 Following this consultation, BEIS is proceeding with *The Competition Act 1998 (Specialisation Agreements Block Exemption) Order 2022* and *The Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022*.

---

<sup>4</sup> <https://www.gov.uk/government/consultations/draft-specialisation-and-research-and-development-agreements-block-exemption-orders-2022>

# Specialisation Agreements Block Exemption Order

## Conditions and effect of breach provisions

- 1.1 Stakeholders noted that the drafting of certain provisions setting out the conditions for the block exemption and the effect of breaches of any such conditions were confusing. Noting these concerns, a number of drafting changes have been made throughout the order to clarify. This includes amendments to article 4 on conditions and obligation, article 5 on market share thresholds, article 7 on hardcore restrictions, and article 8 on the effect of breaches (which has been removed and integrated into other articles it relates to).

## Rules for applying thresholds

- 1.2 The provision previously in article 6 about the treatment of agreements where the combined market share of the parties to the agreement does not exceed the 20% threshold referred at the time the agreement is entered into, but subsequently rises above that level, has been moved into article 5. This makes clear that the rules for applying thresholds set out in article 6 apply to such agreements as they do to others.

## Amendment to retained EU block exemption regulation

- 1.3 A new article 12 has been added to the order. This provision makes a consequential amendment to the retained Technology Transfer Block Exemption Regulation<sup>5</sup> to replace a reference to the retained Specialisation Block Exemption Regulation with a reference to the Specialisation Block Exemption Order.

## Refined drafting

- 1.4 Throughout the order, some provisions have been slightly re-drafted to refine and improve the readability and legal operability. These changes do not introduce substantive changes but include, for example, the removal of the provision in article 5 expressly applying the market share threshold to downstream product markets where one or more of the specialisation products is an intermediate product that is used as an input for the production of a downstream product, as the definition of 'relevant market' in article 2 already ensures this is the case.

---

<sup>5</sup> <https://www.legislation.gov.uk/eur/2014/316/contents>

# R&D Agreements Block Exemption Order

## Conditions and effect of breach provisions

- 1.5 Stakeholders noted that the drafting of certain provisions setting out the conditions for the block exemption and the effect of breaches of any such conditions were confusing. Noting these concerns, a number of drafting changes have been made throughout the order to clarify. This includes amendments to article 5 on access to the final results, article 6 on access to pre-existing know-how, article 7 on joint exploitation, article 10 on hardcore restrictions, article 11 on the effect of breaches, and article 12 on excluded restrictions.

## Thresholds, market shares and duration of exemption

- 1.6 Article 8 has been restructured and redrafted significantly to address stakeholders' concerns about the complicated nature of the provisions and to clarify under which circumstances agreements are block exempted.
- Article 8(1) and (2) apply a market share threshold of 25% of any relevant product markets and relevant technology market where two or more of the parties to the R&D agreement are undertakings who are actual or potential competitors in relation to the same product or technology.
  - Article 8(3), (4) and (5) apply a new threshold where two or more of the parties to the R&D agreement are undertakings competing in innovation and independently engage in, or, in the absence of the R&D agreement, would be able and likely independently to engage in, research and development efforts of a similar nature. In this case, the block exemption applies where there are three or more (a) competing R&D efforts in addition to and comparable with those of the parties to the R&D agreement or (b) third parties able to independently engage in relevant R&D. By introducing this second limb into the test, the order reflects stakeholder feedback that the previous drafting was complicated to apply in practice and removes the need to assess the likelihood of potential competitor's R&D activities.
  - Article 8(6) sets out the duration of application of the block exemption where the parties to the agreement are not competing undertakings at the time the agreement is entered into or where all the conditions article 8(2) and (5) are met, where applicable. Article 8(9) sets out when parties to an R&D agreement are not competing undertakings.
  - Article 8(7) and (8) set out the duration of application of the block exemption for joint exploitation agreements.
  - Article 8(10) defines important terms, including 'competing R&D effort', 'actual competitor', 'potential competitor', and 'undertaking competing in innovation'. Some of

these definitions have been refined to take account of stakeholder feedback and to reflect the wider redrafting of this Article.

## Access provisions

- 1.7 The provision in article 2(2)(a) has been amended to make clear that access to the results of research and development, to intellectual property rights or to know-how means as a minimum the right to use the results, intellectual property rights or know-how but is not limited to this.
- 1.8 The reference to ‘full access’ in article 5(2) has been replaced with a reference to ‘access’ to avoid legal uncertainty over the distinction between ‘full access’ and ‘access’. Article 5(2)(b) now makes clear that access cannot be subject to limitations other than as referred to in article 5(3).

## Definition of ‘specialisation relating to exploitation’

- 1.9 A minor amendment was made to the definition in article 2(1) to clarify that a case where only one of the parties produces and distributes a contract product on the basis of an assignment granted by the other parties is included within scope of the definition.

## Amendments to retained EU block exemption regulations

- 1.10 A new article 18 has been added to the order. This provision makes consequential amendments to the retained Technology Transfer Block Exemption Regulation<sup>6</sup> to replace a reference to the retained R&D Block Exemption Regulation with a reference to the R&D Block Exemption Order.
- 1.11 It also amends the retained Motor Vehicle Block Exemption Regulation<sup>7</sup> to replace a reference to the expired retained Vertical Agreements Block Exemption Regulation with a reference to the Vertical Agreements Block Exemption Order<sup>8</sup>.

## Refined drafting

- 1.12 Throughout the order, some provisions have been slightly re-drafted to refine and improve the readability and legal operability. These changes do not introduce substantive changes but include, for example, amendments to article 13 on the obligation to provide information.

---

<sup>6</sup> <https://www.legislation.gov.uk/eur/2014/316/contents>

<sup>7</sup> <https://www.legislation.gov.uk/eur/2010/461/contents>

<sup>8</sup> <https://www.legislation.gov.uk/uksi/2022/516/contents/made>



---

This publication is available from: [www.gov.uk/government/consultations/draft-specialisation-and-research-and-development-agreements-block-exemption-orders-2022](https://www.gov.uk/government/consultations/draft-specialisation-and-research-and-development-agreements-block-exemption-orders-2022)

If you need a version of this document in a more accessible format, please email [alt.formats@beis.gov.uk](mailto:alt.formats@beis.gov.uk). Please tell us what format you need. It will help us if you say what assistive technology you use.