



# National Security and Investment Act 2021

## 2021 CHAPTER 25

An Act to make provision for the making of orders in connection with national security risks arising from the acquisition of control over certain types of entities and assets; and for connected purposes. [29th April 2021]

BE IT ENACTED by the Queen'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

#### CALL-IN FOR NATIONAL SECURITY

#### CHAPTER 1

#### CALL-IN POWER

### 1 Call-in notice for national security purposes

- (1) The Secretary of State may give a notice if the Secretary of State reasonably suspects that—
- (a) a trigger event has taken place in relation to a qualifying entity or qualifying asset, and the event has given rise to or may give rise to a risk to national security, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying entity or qualifying asset, and the event may give rise to a risk to national security.

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- (2) For the purposes of this Act, in considering whether a trigger event has taken place, or whether arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place, the effect of section 13(1) (notifiable acquisitions that are void) must be disregarded.
- (3) A notice under subsection (1) is referred to in this Act as a call-in notice.
- (4) If the Secretary of State decides to give a call-in notice, the notice must be given to—
  - (a) the acquirer,
  - (b) if the trigger event relates to a qualifying entity, the entity, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) The call-in notice must include a description of the trigger event to which it relates and state the names of the persons to whom the notice is given.
- (6) The Secretary of State may not give a call-in notice unless a statement has been published (and not withdrawn) for the purposes of section 3.
- (7) The Secretary of State must have regard to that statement before giving a call-in notice.
- (8) But nothing in the statement limits the power to give a call-in notice.

## **2 Further provision about call-in notices**

- (1) No more than one call-in notice may be given in relation to each trigger event.
- (2) Subject to subsections (3) and (4), a call-in notice given on the grounds mentioned in section 1(1)(a)—
  - (a) may not be given after the end of the period of 6 months beginning with the day on which the Secretary of State became aware of the trigger event, and
  - (b) may not be given after the end of the period of 5 years beginning with the day on which the trigger event took place.
- (3) Subsection (2)(b) does not apply where the trigger event is one in relation to which section 13(1) has effect.
- (4) In relation to a trigger event taking place during the period beginning with 12 November 2020 and ending with the day before commencement day, a call-in notice given on the grounds mentioned in section 1(1)(a)—
  - (a) if the Secretary of State became aware of the trigger event before commencement day, may not be given after the end of the period of 6 months beginning with commencement day,
  - (b) if the Secretary of State became aware of the trigger event on or after commencement day—
    - (i) may not be given after the end of the period of 6 months beginning with the day on which the Secretary of State became aware of the trigger event, and
    - (ii) may not be given after the end of the period of 5 years beginning with commencement day.
- (5) In this section “commencement day” means the day on which this section comes into force.
- (6) This section is subject to section 22 (and see section 62).

### **3 Statement about exercise of call-in power**

- (1) The Secretary of State may publish a statement for the purposes of this section if the requirements set out in section 4(1) are satisfied.
- (2) The statement is a statement prepared by the Secretary of State that sets out how the Secretary of State expects to exercise the power to give a call-in notice.
- (3) The statement may include, in particular—
  - (a) details of sectors of the economy in relation to which the Secretary of State considers that trigger events are more likely to give rise to a risk to national security,
  - (b) details of the trigger events, qualifying entities and qualifying assets in relation to which the Secretary of State expects to exercise the power to give a call-in notice, and
  - (c) details of factors that the Secretary of State expects to take into account when deciding whether or not to exercise the power.
- (4) The Secretary of State must review a statement published under this section at least once every 5 years.
- (5) A statement published under this section may be amended or replaced by a subsequent statement, and this section and section 4 apply in relation to any amended or replacement statement as in relation to the original statement.
- (6) Nothing in a statement published under this section affects the power of the Secretary of State to make notifiable acquisition regulations (see section 6).

### **4 Consultation and parliamentary procedure**

- (1) Before the Secretary of State may publish a statement for the purposes of section 3 the Secretary of State must—
  - (a) carry out such consultation as the Secretary of State thinks appropriate in relation to a draft of the statement,
  - (b) make any changes to the draft that appear to the Secretary of State to be necessary in view of the responses to the consultation, and
  - (c) lay the statement before Parliament.
- (2) Either House of Parliament may at any time before the expiry of the 40-day period resolve not to approve the statement.
- (3) If either House of Parliament resolves not to approve the statement under subsection (2), the Secretary of State must withdraw the statement.
- (4) Any such resolution under subsection (2) does not affect the validity of a call-in notice given following the publication of the statement prior to its withdrawal, and does not affect the publication of a new statement.
- (5) “The 40-day period” is the period of 40 days beginning with the day on which the statement is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the days on which it is laid).
- (6) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

- (7) The requirements in subsection (1)(a) and (b) may be met by consultation carried out before this section comes into force.

## CHAPTER 2

### INTERPRETATION

#### 5 Meaning of “trigger event” and “acquirer”

- (1) For the purposes of this Act, a “trigger event” takes place when—
- (a) a person gains control of a qualifying entity, as set out in section 8, or
  - (b) a person gains control of a qualifying asset, as set out in section 9.
- (2) In this Act “acquirer” means the person who gains the control referred to in subsection (1) (or in relation to a trigger event that has not yet taken place, would gain that control).

#### 6 Notifiable acquisitions

- (1) The Secretary of State may make regulations for the purposes of this section (“notifiable acquisition regulations”).
- (2) A notifiable acquisition takes place when a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8, of a qualifying entity of a specified description.
- (3) But a notifiable acquisition does not take place if complying with the requirement to give a mandatory notice under section 14(1) would be impossible for the person within subsection (2).
- (4) A description of qualifying entity that is specified must include provision that the entity carries on activities in the United Kingdom which are of a specified description (whether or not it also carries on other activities).
- (5) Notifiable acquisition regulations may—
- (a) amend this section in relation to the circumstances in which a notifiable acquisition takes place or does not take place,
  - (b) make provision for exemptions by reference to the characteristics of the person within subsection (2),
  - (c) make consequential amendments of other provisions of this Act.
- (6) Notifiable acquisition regulations may by virtue of subsection (5)(a) include, in particular, provision about the circumstances in which the gaining of control of a qualifying asset of a specified description is a notifiable acquisition.
- (7) A description specified under subsection (6) may only include qualifying assets within section 7(6) if it includes provision that any such asset is used in connection with activities carried on in the United Kingdom which are of a specified description (whether or not it is also used in connection with other activities).
- (8) In this section “specified” means specified in notifiable acquisition regulations.

## **7 Qualifying entities and assets**

- (1) This section defines “qualifying entity” and “qualifying asset” for the purposes of this Act.
- (2) A “qualifying entity” is (subject to subsection (3)) any entity, whether or not a legal person, that is not an individual, and includes a company, a limited liability partnership, any other body corporate, a partnership, an unincorporated association and a trust.
- (3) An entity which is formed or recognised under the law of a country or territory outside the United Kingdom is a “qualifying entity” only if it—
  - (a) carries on activities in the United Kingdom, or
  - (b) supplies goods or services to persons in the United Kingdom.
- (4) A “qualifying asset” is (subject to subsection (6)) an asset of any of the following types—
  - (a) land,
  - (b) tangible (or, in Scotland, corporeal) moveable property,
  - (c) ideas, information or techniques which have industrial, commercial or other economic value.
- (5) Examples of assets within subsection (4)(c) include—
  - (a) trade secrets,
  - (b) databases,
  - (c) source code,
  - (d) algorithms,
  - (e) formulae,
  - (f) designs,
  - (g) plans, drawings and specifications,
  - (h) software.
- (6) Land or moveable property situated outside the United Kingdom or the territorial sea, or any asset within subsection (4)(c), is a “qualifying asset” only if it is used in connection with—
  - (a) activities carried on in the United Kingdom, or
  - (b) the supply of goods or services to persons in the United Kingdom.

## **8 Control of entities**

- (1) For the purposes of this Act, a person gains control of a qualifying entity if the person acquires a right or interest in, or in relation to, the entity and as a result one or more of the cases described in this section arises.
- (2) The first case is where the percentage of the shares that the person holds in the entity increases—
  - (a) from 25% or less to more than 25%,
  - (b) from 50% or less to more than 50%, or
  - (c) from less than 75% to 75% or more.
- (3) In subsection (2), the reference to holding a percentage of shares is—

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- (a) in the case of an entity that has a share capital, to holding shares comprised in the issued share capital of the entity of a nominal value (in aggregate) of that percentage of the share capital,
  - (b) in the case of an entity that does not have a share capital, to holding a right to a share of that percentage of the capital or profits of the entity,
  - (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.
- (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.
- (5) The second case is where the percentage of the voting rights that the person holds in the entity increases—
- (a) from 25% or less to more than 25%,
  - (b) from 50% or less to more than 50%, or
  - (c) from less than 75% to 75% or more.
- (6) The third case is where the acquisition is of voting rights in the entity that (whether alone or together with other voting rights held by the person) enable the person to secure or prevent the passage of any class of resolution governing the affairs of the entity.
- (7) In subsections (5) and (6), a reference to the voting rights in an entity is—
- (a) in the case of an entity that has a share capital, to the rights conferred on shareholders in respect of their shares to vote at general meetings of the entity on all or substantially all matters,
  - (b) in the case of an entity that does not have a share capital, to the rights conferred on members to vote at general meetings of the entity on all or substantially all matters,
- and, in the case of an entity that does not have general meetings at which matters are decided by such votes, includes any rights in relation to the entity that are of the equivalent effect.
- (8) The fourth case is (subject to subsection (9)) where the acquisition, whether alone or together with other interests or rights held by the person, enables the person materially to influence the policy of the entity.
- (9) Subsection (8) does not include a case where the person already holds any interest or right that enables the person materially to influence the policy of the entity.

## **9 Control of assets**

- (1) For the purposes of this Act, a person gains control of a qualifying asset if the person acquires a right or interest in, or in relation to, the asset and as a result the person is able—
- (a) to use the asset, or use it to a greater extent than prior to the acquisition, or
  - (b) to direct or control how the asset is used, or direct or control how it is used to a greater extent than prior to the acquisition.

This is subject to section 11.

- (2) In this section, references to the use of an asset include references to its exploitation, alteration, manipulation, disposal or destruction.

## **10 Holding and acquiring interests and rights: supplementary**

- (1) Schedule 1 provides for particular cases in which a person is to be treated for the purposes of this Act as holding an interest or right.
- (2) A person is to be treated for the purposes of this Act as acquiring an interest or right (to the extent that the person would not otherwise be regarded as doing so) where—
- (a) the interest or right becomes treated as held by the person by virtue of Schedule 1, or
  - (b) the person is already treated as holding the interest or right by virtue of that Schedule and something occurs in relation to the interest or right which would be regarded as its acquisition by the person (including by virtue of paragraph (a)) if the person was not already treated as holding it.

## **11 Exceptions relating to control of assets**

- (1) For the purposes of this Act a person is not to be regarded as gaining control of a qualifying asset by reason of an acquisition made by an individual for purposes that are wholly or mainly outside the individual's trade, business or craft.
- (2) Subsection (1) does not apply in relation to an asset that—
- (a) is land, or
  - (b) falls within any of the following (as it has effect from time to time)—
    - (i) the Schedule to the Export of Radioactive Sources (Control) Order 2006 (S.I. 2006/1846),
    - (ii) article 4A of, or Schedule 2 or 3 to, the Export Control Order 2008 (S.I. 2008/3231),
    - (iii) Annex I or IV to Council Regulation (EC) No 428/2009 of 5 May 2009,
    - (iv) Annex I to Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012,
    - (v) Annex II or III to Regulation (EU) 2019/125 of the European Parliament and of the Council of 1 January 2019.
- (3) The Secretary of State may by regulations—
- (a) amend subsection (2) so as to add, vary or remove any asset or description of asset,
  - (b) prescribe other circumstances, or descriptions of circumstances, in which a person is not to be regarded for the purposes of this Act as gaining control of a qualifying asset.

## **12 Trigger events: supplementary**

- (1) If a trigger event takes place over a period of more than one day, or if it is unclear when during a period of more than one day the event has taken place, it is treated for the purposes of this Act as taking place on the last day of the period.

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- (2) Subsections (3) and (4) apply if a person enters into an agreement or arrangement that enables the person (contingently or not) to do something in the future that would result in a trigger event taking place.
- (3) For the purposes of this Act, entering into the agreement or arrangement does not necessarily establish that arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place.
- (4) The question of whether such arrangements are in progress or contemplation (at the time of entry into the agreement or arrangement or subsequently) is to be determined by reference to all the circumstances, including how likely it is in practice that person will do the thing that would result in a trigger event taking place.

### CHAPTER 3

#### APPROVAL OF NOTIFIABLE ACQUISITION

#### 13 Approval of notifiable acquisition

- (1) A notifiable acquisition that is completed without the approval of the Secretary of State is void.
- (2) The Secretary of State may approve a notifiable acquisition by—
  - (a) giving a notification under section 14(8)(b)(ii),
  - (b) making a final order under section 26, subject to subsection (3),
  - (c) giving a final notification under section 26.
- (3) A notifiable acquisition, in relation to which a final order has been made, that is completed otherwise than in accordance with the final order, is void.

### CHAPTER 4

#### PROCEDURE

##### *Procedure in respect of notifiable acquisition*

#### 14 Mandatory notification procedure

- (1) Subject to subsection (2), a person must give notice to the Secretary of State before the person, pursuant to a notifiable acquisition, gains control in circumstances falling within section 6(2).
- (2) Subsection (1) does not apply if the Secretary of State has already given a call-in notice, which has not been revoked, in relation to the proposed notifiable acquisition.
- (3) A notice under subsection (1) is referred to in this Act as a mandatory notice.
- (4) The Secretary of State may by regulations prescribe the form and content of a mandatory notice.



- (5) As soon as reasonably practicable after receiving a mandatory notice, the Secretary of State must decide whether to reject or accept the notice.
- (6) The Secretary of State may reject the mandatory notice on one or more of the following grounds—
  - (a) it does not meet the requirements of this section,
  - (b) it does not meet the requirements prescribed by the regulations,
  - (c) it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice in relation to the proposed notifiable acquisition.
- (7) If the mandatory notice is rejected, the Secretary of State must, as soon as practicable, provide reasons in writing for that decision to the person who gave the notice.
- (8) If the mandatory notice is accepted, the Secretary of State must—
  - (a) as soon as practicable, notify each relevant person, and
  - (b) before the end of the review period—
    - (i) give a call-in notice in relation to the proposed notifiable acquisition, or
    - (ii) notify each relevant person that no further action will be taken under this Act in relation to the proposed notifiable acquisition.
- (9) The “review period” is the period of 30 working days beginning with the day on which the notification under subsection (8)(a) is given to the person who gave the mandatory notice.
- (10) In this section “relevant person” means the person who gave the mandatory notice and such other persons as the Secretary of State considers appropriate.

## **15 Requirement to consider retrospective validation without application**

- (1) This section and section 16 apply to a notifiable acquisition that is completed without the approval of the Secretary of State and, accordingly, is void (see section 13(1)).
- (2) The Secretary of State must, before the end of the period of 6 months beginning with the day on which the Secretary of State becomes aware of the notifiable acquisition—
  - (a) give a call-in notice in relation to the acquisition, or
  - (b) give a validation notice in relation to the acquisition to each relevant person and notify those persons that no further action will be taken under this Act in relation to the acquisition.
- (3) The effect of a validation notice given under this section or section 16 or 17, is that the notifiable acquisition to which it relates is to be treated as having been completed with the approval of the Secretary of State (and, accordingly, is not void).
- (4) In this section “relevant person” means—
  - (a) the person who was required to give a mandatory notice to the Secretary of State in relation to the acquisition (see section 14(1)), and
  - (b) such other persons as the Secretary of State considers appropriate.

**16 Application for retrospective validation of notifiable acquisition**

- (1) Any person materially affected by the fact that a notifiable acquisition to which this section applies (see section 15(1)) is void, may apply to the Secretary of State for a validation notice in relation to the acquisition.
- (2) An application under subsection (1) is referred to in this Act as a validation application.
- (3) The Secretary of State may by regulations prescribe the form and content of a validation application.
- (4) Subject to subsection (8), as soon as reasonably practicable after receiving a validation application, the Secretary of State must decide whether to reject or accept the application.
- (5) The Secretary of State may reject the application on one or more of the following grounds—
  - (a) it does not meet the requirements of this section,
  - (b) it does not meet the requirements prescribed by the regulations,
  - (c) it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice in relation to the acquisition.
- (6) If the application is rejected, the Secretary of State must, as soon as practicable, provide reasons in writing for that decision to the person who made the application.
- (7) If the application is accepted, the Secretary of State must—
  - (a) as soon as practicable, notify each relevant person, and
  - (b) before the end of the review period—
    - (i) give a call-in notice in relation to the acquisition, or
    - (ii) give a validation notice in relation to the acquisition to each relevant person and notify those persons that no further action will be taken under this Act in relation to the acquisition.
- (8) The Secretary of State is not required to consider a validation application in relation to an acquisition if, in the opinion of the Secretary of State, there has been no material change in circumstances since a previous validation application in relation to the acquisition was made.
- (9) In this section—
 

“relevant person” means the person who made the validation application and such other persons as the Secretary of State considers appropriate;

the “review period” is the period of 30 working days beginning with the day on which the notification under subsection (7)(a) is given to the person who made the validation application.

**17 Retrospective validation of notifiable acquisition following call-in**

- (1) This section applies where the Secretary of State has given a call-in notice pursuant to—
  - (a) subsection (2)(a) of section 15, or
  - (b) subsection (7)(b)(i) of section 16,

(and, accordingly, the trigger event to which the call-in notice relates is, or includes, a notifiable acquisition to which those sections apply.)

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- (2) If the Secretary of State gives a final notification in relation to the call-in notice, the Secretary of State must also give a validation notice in relation to the acquisition.
- (3) A validation notice under this section must be given to—
  - (a) each person to whom the final notification is given,
  - (b) the person (if any) who made an application in relation to the acquisition under section 16, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (4) Subsection (5) applies if the Secretary of State makes a final order in relation to the call-in notice.
- (5) So much of the notifiable acquisition as would, had it been completed after the making of the final order, have been completed in accordance with the order is to be treated as having been completed with the approval of the Secretary of State (and, accordingly, is not void).

#### *Voluntary notification of trigger event*

### **18 Voluntary notification procedure**

- (1) This section does not apply in relation to—
  - (a) arrangements which would result in a notifiable acquisition,
  - (b) a trigger event that is, or includes, a notifiable acquisition.
- (2) A seller, acquirer or the qualifying entity concerned may give a notice to the Secretary of State stating that —
  - (a) a trigger event has taken place in relation to a qualifying entity or a qualifying asset, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying entity or a qualifying asset.
- (3) A notice under subsection (2) is referred to in this Act as a voluntary notice.
- (4) The Secretary of State may by regulations prescribe the form and content of a voluntary notice.
- (5) As soon as reasonably practicable after receiving the voluntary notice, the Secretary of State must decide whether to reject or accept the notice.
- (6) The Secretary of State may reject the voluntary notice on one or more of the following grounds—
  - (a) it does not meet the requirements of this section,
  - (b) it does not meet the requirements prescribed by the regulations,
  - (c) it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice,
  - (d) there is no reasonable prospect of being able to give a call-in notice due to the operation of the time-limits in subsection (2) or (4) of section 2.
- (7) If the voluntary notice is rejected, the Secretary of State must, as soon as practicable, provide reasons in writing for that decision to each relevant person.

- (8) If the voluntary notice is accepted, the Secretary of State must—
- (a) as soon as practicable, notify each relevant person, and
  - (b) before the end of the review period—
    - (i) give a call-in notice in relation to the trigger event, or
    - (ii) notify each relevant person that no further action will be taken under this Act in relation to the trigger event.
- (9) The “review period” is the period of 30 working days beginning with the day on which the notification under subsection (8)(a) is given to the person who gave the voluntary notice; but this does not affect the operation of the time-limits in subsections (2) and (4) of section 2.
- (10) In this section—
- “relevant person” means the person who gave the voluntary notice and such other persons as the Secretary of State considers appropriate,
- “seller”, in relation to a trigger event, means a person who has ceded control of the qualifying entity or a qualifying asset (or in relation to a trigger event that has not yet taken place, would cede that control).

*Information, etc*

**19 Power to require information**

- (1) The Secretary of State may give a notice to a person (subject to section 21) to require the person to provide any information in relation to the exercise of the Secretary of State’s functions under this Act which—
- (a) is specified or described in the notice, or falls within a category of information specified or described in the notice, and
  - (b) is within that person’s possession or power.
- (2) The Secretary of State is not to require the provision of information under this section except where the requirement to provide information is proportionate to the use to which the information is to be put in the carrying out of the Secretary of State’s functions under this Act.
- (3) A notice under subsection (1) is referred to in this Act as an information notice.
- (4) An information notice may—
- (a) specify the manner in which the information is to be provided,
  - (b) specify a time limit for—
    - (i) providing the information,
    - (ii) notifying the Secretary of State that the information is not in the person’s possession or power, or
  - (c) require the person to provide any information within their possession or power which would enable the Secretary of State to find the information required by the notice.
- (5) An information notice must—
- (a) specify the purpose for which the notice is given, and
  - (b) state the possible consequences of not complying with the notice.

- (6) A person is not required under this section to provide any information which that person could not be compelled to provide in evidence in civil proceedings before the court.
- (7) A reference in this section to the provision of information includes a reference to the provision of a legible and intelligible copy of information recorded otherwise than in legible form.
- (8) A person to whom information is provided under this section may copy the information.
- (9) In this section “the court” means—
  - (a) in relation to England and Wales or Northern Ireland, the High Court,
  - (b) in relation to Scotland, the Court of Session, and
  - (c) in relation to a person outside the United Kingdom, the High Court of England and Wales.

## **20 Attendance of witnesses**

- (1) The Secretary of State may give a notice to a person (subject to section 21) to require the person—
  - (a) to attend at a time and place specified in the notice, and
  - (b) to give evidence to the Secretary of State in relation to the exercise of the Secretary of State’s functions under this Act.
- (2) The Secretary of State is not to require the giving of evidence under this section except where the requirement to give evidence is proportionate to the use to which the evidence is to be put in the carrying out of the Secretary of State’s functions under this Act.
- (3) A notice under subsection (1) is referred to in this Act as an attendance notice.
- (4) An attendance notice must—
  - (a) specify the purpose for which the notice is given, and
  - (b) state the possible consequences of not complying with the notice.
- (5) A person is not required under this section to give any evidence which that person could not be compelled to give in civil proceedings before the court.
- (6) A person is not required, in compliance with an attendance notice, to go more than 10 miles from their place of residence unless necessary travelling expenses are paid or offered to that person.
- (7) In this section “the court” means—
  - (a) in relation to evidence given in England and Wales or Northern Ireland, the High Court,
  - (b) in relation to evidence given in Scotland, the Court of Session, and
  - (c) in relation to evidence given outside the United Kingdom, the High Court of England and Wales.

## 21 Information notices and attendance notices: persons outside the UK

- (1) The Secretary of State may give an information notice or an attendance notice to a person outside the United Kingdom only if the person falls within subsection (2), (3) or (4) of this section.
- (2) A person falls within this subsection if the person is—
  - (a) a United Kingdom national,
  - (b) an individual ordinarily resident in the United Kingdom,
  - (c) a body incorporated or constituted under the law of any part of the United Kingdom, or
  - (d) carrying on business in the United Kingdom.
- (3) A person falls within this subsection if—
  - (a) a trigger event has taken place in relation to a qualifying entity which is formed or recognised under the law of any part of the United Kingdom, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying entity of that description,and the person is the acquirer.
- (4) A person falls within this subsection if—
  - (a) a trigger event has taken place in relation to a qualifying asset which —
    - (i) is within section 7(4)(a) or (b) and is situated in the United Kingdom or the territorial sea, or
    - (ii) is within section 7(4)(c) and is used in connection with activities carried on in the United Kingdom, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying asset within paragraph (a),and the person is the acquirer.

## 22 False or misleading information

- (1) This section applies where false or misleading information is provided to the Secretary of State—
  - (a) in a mandatory notice,
  - (b) in a validation application,
  - (c) in a voluntary notice,
  - (d) in response to an information notice, or
  - (e) in response to an attendance notice.
- (2) Where a decision made by the Secretary of State under this Act is materially affected by the false or misleading information, the Secretary of State may reconsider the decision and may affirm, vary or revoke it.
- (3) Where a decision is varied or revoked under this section, the Secretary of State must give notice to that effect to such persons as the Secretary of State considers appropriate.
- (4) If a revoked decision was—
  - (a) a decision to give a call-in notice,
  - (b) a decision to make or revoke a final order, or

- (c) a decision to give a final notification,  
the Secretary of State may give a further call-in notice and section 2(1) does not apply.
- (5) Where a decision is revoked under this section, the time limits in section 2(2) and (4) do not apply to the case concerned, but a call-in notice (or a further call-in notice) may not be given after the end of the period of 6 months beginning with the day on which the information was discovered to be false or misleading.

## PART 2

### REMEDIES

#### *Assessment period*

#### **23 Meaning of “assessment period”**

- (1) This section defines “assessment period” in relation to a call-in notice.
- (2) The assessment period begins with the day on which the call-in notice is given to the acquirer.
- (3) In this section—
  - (a) “the initial period” is the period of 30 working days beginning with the day mentioned in subsection (2),
  - (b) “the additional period” is the period of 45 working days beginning with the first working day after the day on which the initial period ends,
  - (c) a “voluntary period” is such period of working days, beginning with the first working day after the day on which the additional period (or the previous voluntary period) ends, as may be agreed in writing between the Secretary of State and the acquirer.
- (4) The assessment period ends at the end of the initial period unless, before the end of the initial period, the Secretary of State gives an additional period notice to each person to whom the call-in notice was given (see subsection (8)).
- (5) If an additional period notice is given, the assessment period ends at the end of the additional period unless, before the end of the additional period, a voluntary period is agreed.
- (6) If a voluntary period is agreed, the assessment period ends at the end of the voluntary period, or at the end of any further voluntary period which is agreed.
- (7) The Secretary of State must give notice of any voluntary period, or further voluntary period to each person to whom the call-in notice was given.
- (8) An “additional period notice” is a notice which the Secretary of State may give if the Secretary of State—
  - (a) reasonably believes that—
    - (i) a trigger event has taken place or that arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event, and

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- (ii) a risk to national security has arisen from the trigger event or would arise from the trigger event if carried into effect, and
  - (b) reasonably considers that the additional period is required to assess the trigger event further.
- (9) A voluntary period or further voluntary period may be agreed by the Secretary of State only if the Secretary of State—
  - (a) is satisfied, on the balance of probabilities, that—
    - (i) a trigger event has taken place or that arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event, and
    - (ii) a risk to national security has arisen from the trigger event or would arise from the trigger event if carried into effect, and
  - (b) reasonably considers that the period is required to consider whether to make a final order or what provision a final order should contain.

## **24 Effect of information notice and attendance notice**

- (1) This section applies if an information notice or an attendance notice is given at any time during the assessment period in relation to a call-in notice.
- (2) As soon as practicable after giving the information notice or attendance notice, the Secretary of State must notify each relevant person of—
  - (a) the fact that an information notice or attendance notice has been given, and
  - (b) the time limit specified in the notice for complying with the requirements of the notice.
- (3) As soon as practicable after—
  - (a) the Secretary of State is satisfied that the requirements of the information notice or the attendance notice have been complied with, or
  - (b) (if earlier) the time specified in the information notice or the attendance notice for complying with those requirements has passed,
 the Secretary of State must notify each relevant person confirming that fact.
- (4) Any day falling within the period beginning with the day on which the notice under subsection (2) is given and ending with the day on which a notice under subsection (3) is given does not count for the purposes of calculating the initial, additional or voluntary period under section 23.
- (5) In this section “relevant person” means each person to whom the call-in notice was given.

### *Interim and final orders*

## **25 Interim orders**

- (1) The Secretary of State may, during the assessment period in relation to a call-in notice, make an order if the Secretary of State reasonably considers that the provisions of the order are necessary and proportionate for the purpose of preventing or reversing pre-emptive action, or mitigating its effects.



- (2) In subsection (1), “pre-emptive action” means action which might prejudice the exercise of the Secretary of State’s functions under this Act in relation to the call-in notice.
- (3) An order under subsection (1) is referred to in this Act as an “interim order”.
- (4) An interim order may include—
- (a) provision requiring a person, or description of person, to do, or not to do, particular things,
  - (b) provision for the appointment of a person to conduct or supervise the conduct of activities on such terms and with such powers as may be specified or described in the order,
  - (c) provision requiring a person, or description of person, not to disclose the contents of the order except to the extent permitted by the order,
  - (d) consequential, supplementary or incidental provision.
- (5) Provision made by or under an interim order may extend to a person’s conduct outside the United Kingdom or the territorial sea only if the person is—
- (a) a United Kingdom national,
  - (b) an individual ordinarily resident in the United Kingdom,
  - (c) a body incorporated or constituted under the law of any part of the United Kingdom, or
  - (d) carrying on business in the United Kingdom.
- (6) An interim order comes into force at such time as is determined by or under the order.
- (7) An interim order ceases to have effect at the earliest of—
- (a) the giving of a final notification or the coming into force of a final order in relation to the call-in notice,
  - (b) such time as is determined by or under the order,
  - (c) such time as it is revoked.

## **26 Final orders and final notifications**

- (1) The Secretary of State must, before the end of the assessment period in relation to a call-in notice—
- (a) make a final order, or
  - (b) give a final notification to each person to whom the call-in notice was given.
- (2) In this section—
- (a) a “final notification” is a notification that no further action in relation to the call-in notice is to be taken under this Act,
  - (b) a “final order” is an order under subsection (3).
- (3) The Secretary of State may, during the assessment period, make a final order if the Secretary of State—
- (a) is satisfied, on the balance of probabilities, that—
    - (i) a trigger event has taken place or that arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event, and

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- (ii) a risk to national security has arisen from the trigger event or would arise from the trigger event if carried into effect, and
  - (b) reasonably considers that the provisions of the order are necessary and proportionate for the purpose of preventing, remedying or mitigating the risk.
- (4) Before making a final order the Secretary of State must consider any representations made to the Secretary of State.
- (5) A final order may include—
  - (a) provision requiring a person, or description of person, to do, or not to do, particular things,
  - (b) provision for the appointment of a person to conduct or supervise the conduct of activities on such terms and with such powers as may be specified or described in the order,
  - (c) provision requiring a person, or description of person, not to disclose the contents of the order except to the extent permitted by the order,
  - (d) consequential, supplementary or incidental provision.
- (6) Provision made by or under a final order may extend to a person's conduct outside the United Kingdom or the territorial sea only if the person is—
  - (a) a United Kingdom national,
  - (b) an individual ordinarily resident in the United Kingdom,
  - (c) a body incorporated or constituted under the law of any part of the United Kingdom, or
  - (d) carrying on business in the United Kingdom.
- (7) A final order comes into force at such time as is determined by or under the order.
- (8) A final order ceases to have effect at such time as is determined by or under the order, unless it is revoked before that time.

## **27 Review, variation and revocation of orders**

- (1) This section applies in relation to an interim order and a final order.
- (2) The Secretary of State must keep each order under review and may vary or revoke it.
- (3) If a person required to comply with an order requests that the Secretary of State vary or revoke it, the Secretary of State must consider the request as soon as practicable after receiving it.
- (4) But the Secretary of State is not required to consider such a request in relation to a final order if, in the opinion of the Secretary of State, there has been no material change of circumstances—
  - (a) since the order was made or last varied, or
  - (b) in the case of a request from a person who has made a previous request in relation to the order, since the previous request was made.

## **28 Orders: supplementary**

- (1) This section applies in relation to an interim order and a final order.

- (2) As soon as practicable after making or varying an order, the Secretary of State must serve the order, or the order as varied, on—
  - (a) each person who is required to comply with the order,
  - (b) each person to whom the call-in notice was given, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (3) As soon as practicable after varying an order, the Secretary of State must give notice to any person who was previously required to comply with the order but is no longer required to comply with it.
- (4) Subject to subsection (5), each order (including each order as varied) or explanatory material accompanying the order must—
  - (a) state the date on which the order or any variation comes into force or how that date is to be determined,
  - (b) state each person, or description of person, who is required to comply with the order,
  - (c) describe the trigger event and entity or asset concerned,
  - (d) state the reasons for making or varying the order,
  - (e) state the possible consequences of not complying with the order,
  - (f) provide information about—
    - (i) how to apply to the Secretary of State for an order to be varied or revoked, and
    - (ii) the procedure for judicial review or, in Scotland, an application to the supervisory jurisdiction of the Court of Session.
- (5) The Secretary of State may exclude from the copy of an order served on any person within subsection (2), or from any explanatory material accompanying the order, anything the disclosure of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.
- (6) As soon as practicable after revoking an order, the Secretary of State must give notice to the persons mentioned in subsection (2) that the order has been revoked.

## **29 Publication of notice of final order**

- (1) Subject to subsection (3), the Secretary of State must publish, in such manner as the Secretary of State considers appropriate, notice of the fact that—
  - (a) a final order has been made,
  - (b) a final order has been varied or revoked.
- (2) The notice under subsection (1) must be published as soon as practicable and must—
  - (a) state the date on which the order, variation or revocation comes into force, or how that date is to be determined,
  - (b) state each person, and each description of person, who is required to comply with the order,
  - (c) describe the trigger event and entity or asset concerned,
  - (d) include a summary of the order, variation or revocation, its effect and the reasons for it,

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- (e) include any other information that the Secretary of State considers it appropriate to include.
- (3) The Secretary of State may exclude from the notice under subsection (1) anything the publication of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.

#### *Financial assistance*

### **30 Financial assistance**

- (1) The Secretary of State may, with the consent of the Treasury, give financial assistance to or in respect of an entity in consequence of the making of a final order.
- (2) “Financial assistance” means loans, guarantees or indemnities, or any other kind of financial assistance (actual or contingent).
- (3) If during any relevant period the amount given under this section totals £100 million or more, the Secretary of State must as soon as practicable lay a report of the amount before the House of Commons.
- (4) If during a relevant period in which a report has been laid under subsection (3) any further amount is given under this section, the Secretary of State must as soon as practicable lay a report of the amount before the House of Commons.
- (5) “Relevant period” means—
  - (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and
  - (b) each subsequent period of 12 months.

#### *CMA functions*

### **31 Interaction with CMA functions under Part 3 of Enterprise Act 2002**

- (1) This section applies at any time when a final order is in force, or a final notification has been given, in relation to a trigger event which involves, or would involve, two or more enterprises ceasing to be distinct enterprises for the purposes of Part 3 of the Enterprise Act 2002 (“the 2002 Act”).
- (2) The Secretary of State may direct the Competition and Markets Authority (“the CMA”) to do, or not to do, anything under Part 3 of the 2002 Act in relation to the trigger event if the Secretary of State reasonably considers that the direction is necessary and proportionate for the purpose of preventing, remedying or mitigating a risk to national security.
- (3) Before giving a direction under this section, the Secretary of State must consult the CMA and such other persons as the Secretary of State considers appropriate.
- (4) The Secretary of State must publish a direction given under this section in such manner as the Secretary of State considers appropriate.
- (5) The duty of the CMA to comply with a direction given under this section applies regardless of any other duty imposed on the CMA.

## PART 3

### ENFORCEMENT AND APPEALS

#### *Offences*

#### **32 Offence of completing notifiable acquisition without approval**

- (1) A person who, pursuant to a notifiable acquisition, gains control in circumstances falling within section 6(2) commits an offence if, without reasonable excuse, that person completes the notifiable acquisition without the approval of the Secretary of State in one of the ways mentioned in section 13(2).
- (2) Subsection (1) applies even if a call-in notice or a validation notice has been given in relation to the notifiable acquisition.
- (3) An offence is committed under this section notwithstanding the effect of section 13(1).

#### **33 Offence of failing to comply with order**

- (1) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement to which the person is subject under or by virtue of an interim order or a final order.
- (2) Where a person is convicted of an offence under this section, the court may make an order requiring that person, within such period as may be specified by the order, to comply with a requirement to which the person is subject under or by virtue of an interim order or a final order.

#### **34 Offences: information and attendance of witnesses**

- (1) A person commits an offence if—
  - (a) the person fails, without reasonable excuse, to comply with a requirement of an information notice or an attendance notice, or
  - (b) the person intentionally or recklessly alters, suppresses or destroys or causes or permits the alteration, suppression or destruction of any information the person has been required by an information notice to provide.
- (2) A person commits an offence if the person intentionally obstructs or delays the making of a copy of information provided in response to an information notice.
- (3) A person commits an offence if—
  - (a) the person supplies any information to the Secretary of State (including by way of giving evidence pursuant to an attendance notice) in connection with a function of the Secretary of State under this Act,
  - (b) the information is false or misleading in a material respect, and
  - (c) the person knows that, or is reckless as to whether, it is false or misleading in a material respect.
- (4) A person commits an offence if—
  - (a) the person supplies any information to another person (other than the Secretary of State),

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- (b) the person supplying the information knows that the information is to be used for the purpose of supplying information to the Secretary of State in connection with a function of the Secretary of State under this Act,
  - (c) the information is false or misleading in a material respect, and
  - (d) the person supplying the information knows that, or is reckless as to whether, it is false or misleading in a material respect.
- (5) Where a person is convicted of an offence under subsection (1) or (2), the court may make an order requiring that person, within such period as may be specified by the order—
- (a) to comply with a requirement in an information notice,
  - (b) to comply with a requirement in an attendance notice, or
  - (c) to permit the making of a copy of information.
- (6) Any reference in subsection (1) to destroying information includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

### **35 Offences in relation to sharing information**

- (1) It is an offence for a person to use or disclose information in contravention of section 54 or 55(1).
- (2) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that—
- (a) the use or disclosure was lawful, or
  - (b) the information had already and lawfully been made available to the public.

### **36 Offences by bodies corporate etc**

- (1) If an offence under this Act is committed by a body—
- (a) with the consent or connivance of an officer of the body, or
  - (b) due to any neglect on the part of such an officer,
- the officer, as well as the body, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In this section—
- “body” means a body corporate, a partnership or an unincorporated association other than a partnership,
  - “officer of a body”—
- (a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity,
  - (b) in relation to a partnership, means a partner or person purporting to act as a partner,
  - (c) in relation to an unincorporated association other than a partnership, means a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned.
- (3) In subsection (2) “director” includes—

- (a) a person occupying in relation to a body corporate the position of a director (by whatever name called),
  - (b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act, and
  - (c) a person who has an interest or right in, or in relation to, the body corporate that (whether alone or together with other interests or rights held by the person) enables the person materially to influence the policy of the body corporate.
- (4) 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 a director of the body.
- (5) The Secretary of State may by regulations provide for the modification of any provision of this section in its application to a body corporate or unincorporated association formed or recognised under the law of a country or territory outside the United Kingdom.

### *Prosecution and penalties*

#### **37 Prosecution**

Proceedings for an offence under this Act may be instituted—

- (a) in England and Wales, only by the Director of Public Prosecutions, and
- (b) in Northern Ireland, only by the Director of Public Prosecutions for Northern Ireland.

#### **38 Proceedings against partnerships etc**

- (1) Proceedings for an offence under this Act may be brought—
- (a) where the offence is alleged to have been committed by a partnership, against the partnership in the firm name,
  - (b) where the offence is alleged to have been committed by an unincorporated association other than a partnership, against the association in its own name.
- (2) Rules of court relating to the service of documents have effect in relation to such proceedings as if the partnership or unincorporated association were a body corporate.
- (3) For the purposes of such proceedings the following provisions apply as they apply in relation to a body corporate—
- (a) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980,
  - (b) section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Schedule 4 to the Magistrates' Court (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (4) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.
- (5) A fine imposed on an unincorporated association other than a partnership on its conviction for an offence is to be paid out of the funds of the association.

**39 Offences: penalties**

- (1) A person who commits an offence under section 32 (completing notifiable acquisition without approval) or 33 (failing to comply with interim or final order) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, or a fine (or both),
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum (or both),
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum (or both),
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine (or both).
- (2) A person who commits an offence under section 34 (offences in relation to supplying information and attendance of witnesses) or 35 (offences in relation to sharing information) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, or a fine (or both),
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum (or both),
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum (or both),
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine (or both).
- (3) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the references in subsections (1)(a) and (2)(a) to 12 months are to be read as references to 6 months.

*Civil sanctions***40 Power to impose monetary penalties**

- (1) Subject to section 43(1), the Secretary of State may give a notice imposing a monetary penalty on a person if the Secretary of State is satisfied, beyond reasonable doubt, that the person has committed an offence under—
- (a) section 32 (completing notifiable acquisition without approval),
  - (b) section 33 (failing to comply with interim or final order), or
  - (c) section 34 (offences in relation to supplying information and attendance of witnesses),
- (including where the person is liable to be proceeded against by virtue of section 36).
- (2) A notice under this section is referred to in this Act as a penalty notice.
- (3) In this Act “monetary penalty” means a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.
- (4) For an offence under section 33 or 34(1)(a), a monetary penalty may be—
- (a) a fixed amount (“a fixed penalty”),
  - (b) an amount calculated by reference to a daily rate (“a daily rate penalty”), or
  - (c) a combination of a fixed penalty and a daily rate penalty.



- (5) For an offence under section 32 or for any other offence under section 34, the monetary penalty may be a fixed penalty only.
- (6) The amount of the monetary penalty is to be such amount as the Secretary of State considers appropriate but it may not exceed the permitted maximum, as set out in section 41.
- (7) When determining a monetary penalty under this section, the Secretary of State must have regard, in particular, to—
  - (a) the seriousness of the offence,
  - (b) the desirability of deterring both the person on whom the penalty is imposed and others from committing the offence to which the penalty relates,
  - (c) the possibility, and desirability, of rectifying any failure to which the offence relates,
  - (d) any steps taken by the person on whom the penalty is imposed towards rectifying any failure to which the offence relates, and
  - (e) the ability of the person on whom the penalty is imposed to pay the penalty.
- (8) A penalty notice must include information as to—
  - (a) the grounds for imposing the monetary penalty,
  - (b) whether the penalty is a fixed penalty, a daily rate penalty or a combination of both and how it is calculated,
  - (c) in the case of a fixed penalty, the amount of the penalty,
  - (d) in the case of a daily rate penalty, the amount of the daily rate, the day on which the amount first starts to accumulate and the day on which, or the circumstances in which, it ceases to accumulate,
  - (e) how the amount of the penalty was determined,
  - (f) how payment may be made,
  - (g) the period within which payment is to be made (which must be at least 28 days),
  - (h) rights of appeal,
  - (i) the consequences of non-payment.
- (9) For the purposes of a daily rate penalty—
  - (a) the first day on which the amount may start to accumulate is the day after the day on which the penalty notice is given,
  - (b) unless the Secretary of State determines an earlier date, the daily rate ceases to accumulate at the beginning of the earliest of—
    - (i) the day on which the requirement to comply to which the offence relates is satisfied,
    - (ii) the day on which that requirement no longer applies.
- (10) A monetary penalty imposed under this section is to be paid out of—
  - (a) the partnership assets where imposed on a partnership, and
  - (b) the funds of the association where imposed on an unincorporated association other than a partnership.

## 41 Permitted maximum penalties

- (1) The following are the permitted maximum fixed penalties for an offence under section 32 or 33—
  - (a) if the offence is committed by a business, the higher of 5% of the total value of the turnover of the business (both in and outside the United Kingdom and including any business owned or controlled by the business) and £10 million,
  - (b) if the offence is committed otherwise than by a business, £10 million.
- (2) The following are the permitted maximum amounts per day for a daily rate penalty for an offence under section 33—
  - (a) if the offence is committed by a business, the higher of 0.1% of the total turnover of the business (both in and outside the United Kingdom and including any business owned or controlled by the business) and £200,000,
  - (b) if the offence is committed otherwise than by a business, £200,000.
- (3) The permitted maximum fixed penalty for an offence under section 34(1)(a) is £30,000.
- (4) The permitted maximum amount per day for a daily rate penalty for an offence under section 34(1)(a) is £15,000.
- (5) The permitted maximum fixed penalty for an offence under section 34(1)(b) is £30,000.
- (6) The permitted maximum fixed penalty for an offence under section 34(2) is £30,000.
- (7) The permitted maximum fixed penalty for an offence under section 34(3) or (4) is £30,000.
- (8) The Secretary of State may by regulations—
  - (a) provide that a person of a description specified in the regulations is or is not a business for the purposes of this section,
  - (b) make provision for determining when a business is to be treated as controlled by another business for the purposes of this section,
  - (c) make provision for determining the turnover (both in and outside the United Kingdom) of a business for the purposes of this section,
  - (d) amend subsection (1) or (2) so as to alter the percentage for the time being specified there,
  - (e) amend any of subsections (1) to (7) by substituting a different sum for any sum for the time being specified there.
- (9) The regulations may in particular—
  - (a) include by virtue of subsection (8)(c) provision as to the amounts which are, or which are not, to be treated as comprising the turnover of a business, or provision as to the date or dates by reference to which the turnover of a business is to be determined,
  - (b) make provision for the Secretary of State to determine matters of a description specified in the regulations (including the matters mentioned in paragraph (a)).

**42 Review, variation and revocation of monetary penalties**

- (1) The Secretary of State must keep a monetary penalty imposed by a penalty notice under review and may vary or revoke the penalty notice as the Secretary of State considers appropriate.
- (2) If a penalty is revoked under this section, the Secretary of State must, as soon as practicable, give a notice to the person upon whom the penalty was imposed.
- (3) If a penalty, or the period within which a penalty is to be paid, is varied under this section, the Secretary of State must, as soon as practicable, give a notice to the person on whom the penalty was imposed which—
  - (a) states the variation and the reasons for the variation,
  - (b) includes information about rights of appeal and consequences of non-payment.
- (4) A notice under subsection (3) is referred to in this Act as a penalty variation notice.

**43 Monetary penalties: criminal proceedings and convictions**

- (1) A penalty notice may not be given to a person in respect of an offence if—
  - (a) criminal proceedings have been instituted but not concluded in respect of the offence, or
  - (b) the person has been convicted of the offence.
- (2) Where a person has paid, or is required to pay, a monetary penalty under a penalty notice, no criminal proceedings may be instituted against the person in respect of the offence to which the notice relates.

**44 Recovering penalties**

- (1) Subsections (2) to (8) apply if all or part of a monetary penalty imposed by a penalty notice is unpaid by the time it is required to be paid.
- (2) The unpaid balance carries interest from time to time at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (3) Where the Secretary of State considers it appropriate to do so, the Secretary of State may require so much of the penalty as has not already been paid to be paid immediately.
- (4) The Secretary of State may recover any of the penalty and any interest that has not been paid if—
  - (a) no appeal relating to the penalty has been brought under section 50 during the period within which such an appeal may be brought, or
  - (b) an appeal has been determined or withdrawn.
- (5) In England and Wales, and in Northern Ireland, the penalty is recoverable as if it were payable under an order of the High Court.
- (6) In Scotland, the penalty 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.
- (7) Where action is taken under this section for the recovery of a sum payable under a penalty notice, the penalty is—

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- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the High Court, and
  - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.
- (8) Any sums received by the Secretary of State by way of a monetary penalty, or interest in respect of such a penalty, under this Act must be paid into the Consolidated Fund.

#### **45 Monetary penalties: cost recovery**

- (1) The Secretary of State may give a notice to a person requiring the person to pay to the Secretary of State the costs incurred by the Secretary of State in relation to the imposition of a monetary penalty on that person under section 40.
- (2) A notice under subsection (1) is referred to in this Act as a cost recovery notice.
- (3) The reference to “costs” in subsection (1) includes, in particular—
  - (a) investigation costs,
  - (b) administration costs,
  - (c) costs of obtaining expert advice (including legal advice).
- (4) A cost recovery notice must specify the amount to be paid and include information as to—
  - (a) the grounds for giving the notice,
  - (b) how payment may be made,
  - (c) the period within which payment is to be made (which must be at least 28 days),
  - (d) rights of appeal,
  - (e) the consequences of non-payment.
- (5) A person required to pay an amount to the Secretary of State under this section may require the Secretary of State to give a detailed breakdown of that amount.
- (6) Costs imposed under this section are to be paid out of—
  - (a) the partnership assets where imposed on a partnership, and
  - (b) the funds of the association where imposed on an unincorporated association other than a partnership.

#### **46 Review, variation and revocation of cost recovery notice**

- (1) The Secretary of State must keep a cost recovery notice under review and may vary or revoke it as the Secretary of State considers appropriate.
- (2) If a cost recovery notice is revoked under this section, the Secretary of State must, as soon as practicable, give a notice to the person to whom the cost recovery notice was given.
- (3) If the costs, or the period within which the costs are to be paid, is varied under this section, the Secretary of State must, as soon as practicable, give a notice to the person to whom the cost recovery notice was given which—

- (a) states the variation and the reasons for the variation,
  - (b) includes information about rights of appeal and consequences of non-payment.
- (4) A notice under subsection (3) is referred to in this Act as a cost variation notice.

#### **47 Enforcement of cost recovery notice**

- (1) Subsections (2) to (8) apply if some or all of the costs payable under a cost recovery notice are unpaid by the time when they are required to be paid.
- (2) The unpaid balance carries interest from time to time at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (3) Where the Secretary of State considers it appropriate to do so, the Secretary of State may require so much of the costs as have not already been paid to be paid immediately.
- (4) The Secretary of State may recover from the person any of the costs and any interest as has not been paid if—
- (a) no appeal relating to the costs has been brought under section 51 during the period within which such an appeal may be brought, or
  - (b) an appeal has been determined or withdrawn.
- (5) In England and Wales, and in Northern Ireland, the costs are recoverable as if they were payable under an order of the High Court.
- (6) In Scotland, the costs 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.
- (7) Where action is taken under this section for the recovery of a sum payable under a cost recovery notice, the costs are—
- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if they were a judgment entered in the High Court, and
  - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if they were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.
- (8) Any sums received by the Secretary of State by way of costs, or interest in respect of such costs, under this Act must be paid into the Consolidated Fund.

#### *Civil proceedings*

#### **48 Enforcement through civil proceedings**

- (1) A person's duty to comply with a requirement to which the person is subject under or by virtue of an information notice, an attendance notice, an interim order or a final order is enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or for any other appropriate relief or remedy.
- (2) Subsection (1) applies whether or not the person is in the United Kingdom.

*Judicial review and appeals***49 Procedure for judicial review of certain decisions**

- (1) This section applies to a claim for judicial review of a relevant decision.
- (2) A “relevant decision” means—
- (a) a decision or action under or by virtue of any of the following provisions, but not including any such decision or action that is directly related to a Part 3 function of the Secretary of State—
    - (i) section 19,
    - (ii) section 20,
    - (iii) section 21,
    - (iv) section 54(1) and (2)(a),
    - (v) section 54(6) to (8), insofar as the decision or action is related to the disclosure of information under section 54(2)(a),
    - (vi) section 55(1) and (3), insofar as the decision or action is related to the disclosure of information under section 54(2)(a),
    - (vii) section 56,
    - (viii) section 57, other than a decision or action related to the disclosure of information under section 54(2)(b) to (f) or (3),
  - (b) a decision or action under or by virtue of section 54(9), insofar as the decision or action is related to a decision or action falling within paragraph (a)(iv) or (v),
  - (c) a decision or action under or by virtue of—
    - (i) any provision of Part 1 of this Act not mentioned in paragraph (a),
    - (ii) Part 2 of this Act,
    - (iii) section 53, or
    - (iv) section 62,
- and “action” includes a failure to act.
- (3) A “Part 3 function” means a function under or by virtue of this Part of this Act.
- (4) The court may entertain proceedings for a claim to which this section applies only if the claim form is filed before the end of the period of 28 days beginning with the day after the day on which the grounds to make the claim first arose, unless the court considers that exceptional circumstances apply.
- (5) In the application of this section to Scotland—
- (a) subsection (1) has effect with the substitution of “an application to the supervisory jurisdiction of the court in respect” for “a claim for judicial review”,
  - (b) subsection (4) has effect with the substitution of—
    - (i) “an application” for “a claim”,
    - (ii) “application is made” for “claim form is filed”,
    - (iii) “the application” for “the claim”.
- (6) In the application of this section to Northern Ireland—
- (a) subsection (1) has effect with the substitution of “an application” for “a claim”,

- (b) subsection (4) has effect with the substitution of—
  - (i) “an application” for “a claim”,
  - (ii) “application for leave to apply for judicial review” for “claim form is filed”,
  - (iii) “the application” for “the claim”.

- (7) In this section “the court” means—
  - (a) the High Court in England and Wales,
  - (b) the Court of Session in Scotland, and
  - (c) the High Court in Northern Ireland.

## **50 Appeals against monetary penalties**

- (1) A person who is given a penalty notice or a variation notice may appeal to the court.
- (2) A person may not appeal under this section after the end of the period of 28 days beginning with the day after the day on which the notice is given to the person.
- (3) On an appeal against a penalty notice the court may—
  - (a) confirm or quash the decision to impose the monetary penalty,
  - (b) confirm or reduce the amount of the penalty,
  - (c) confirm or vary the period within which all or part of the penalty is to be paid.
- (4) On an appeal against a variation notice the court may confirm, vary or quash the variation but may not increase the amount of the monetary penalty.
- (5) In this section “the court” means—
  - (a) the High Court in England and Wales,
  - (b) the Court of Session in Scotland, and
  - (c) the High Court in Northern Ireland.
- (6) Where an appeal is brought under this section, the monetary penalty is not payable until the appeal is determined or withdrawn, unless the court orders otherwise.

## **51 Appeals against costs**

- (1) A person given a cost recovery notice or a cost variation notice may appeal to the court.
- (2) A person may not appeal under this section after the end of the period of 28 days beginning with the day after the day on which the notice is given to the person.
- (3) On an appeal against a cost recovery notice the court may—
  - (a) confirm or quash the decision to impose costs,
  - (b) confirm or reduce the amount payable,
  - (c) confirm or vary the period within which payment is to be made.
- (4) On an appeal against a cost variation notice the court may confirm, vary or quash the variation but may not increase the amount payable.
- (5) In this section “the court” means—
  - (a) the High Court in England and Wales,
  - (b) the Court of Session in Scotland, and
  - (c) the High Court in Northern Ireland.

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- (6) Where an appeal is brought under this section, the costs are not payable until the appeal is determined or withdrawn, unless the court orders otherwise.

*Territorial application*

**52 Extra-territorial application and jurisdiction to try offences**

- (1) Sections 32, 33, 34 and 35 apply—
- (a) whether the offence is committed in the United Kingdom or elsewhere,
  - (b) if the offence is committed by an individual, whatever the nationality of the individual committing the offence,
  - (c) if the offence is committed otherwise than by an individual, regardless of whether the body corporate or unincorporated association is formed or recognised under the law of a country or territory outside the United Kingdom.
- (2) Where an offence under this Part is committed outside the United Kingdom—
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (3) In the application of subsection (2) to Scotland, any such proceedings against a person may be taken—
- (a) in any sheriff court district in which the person is apprehended or is in custody, or
  - (b) in such sheriff court district as the Lord Advocate may determine.
- (4) In subsection (3) “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

**PART 4**

MISCELLANEOUS

*Administrative requirements*

**53 Procedure for service, etc**

- (1) The Secretary of State may by regulations make provision for the procedure which must be followed when a provision of or made under this Act requires or allows a notice, order, notification or document of any kind to be given or served.
- (2) The regulations may, in particular, make provision—
- (a) as to the manner in which a document must be given or served,
  - (b) as to the address to which a document must be sent,
  - (c) requiring, or allowing, a document to be sent electronically,
  - (d) for treating a document as having been given, received or served on a date or at a time determined in accordance with the regulations,



- (e) as to what must, or may, be done if a sender or an intended recipient is not an individual,
  - (f) as to what must, or may, be done if a person is treated by virtue of Schedule 1 as holding an interest or right for the purposes of this Act,
  - (g) as to what must, or may, be done if a sender or an intended recipient is outside the United Kingdom.
- (3) Section 7 of the Interpretation Act 1978 (service of notice by post) has effect in relation to provisions made under this Act subject to any provision made by regulations under this section.

### *Information gateways*

## **54 Disclosure of information**

- (1) A public authority may disclose information to the Secretary of State for the purpose of facilitating the exercise by the Secretary of State of functions under this Act.
- (2) The Secretary of State may disclose information received under this Act to a public authority or an overseas public authority—
- (a) for the purpose of facilitating the exercise by the Secretary of State of functions under this Act,
  - (b) for the prevention or detection of crime,
  - (c) for the purposes of a criminal investigation,
  - (d) for the purposes of criminal proceedings,
  - (e) for the purposes of civil proceedings under this Act, or
  - (f) for the purpose of protecting national security.
- (3) The Secretary of State may also disclose such information to an overseas public authority for the purpose of the exercise of corresponding functions of overseas public authorities.
- (4) A person who receives information under subsection (2) or (3) may not—
- (a) use the information for a purpose other than the purpose for which it was disclosed, or
  - (b) further disclose the information,
- except with the consent of the Secretary of State (which may be general or specific).
- (5) Subsection (4) does not apply to information to which section 55 applies (information received from HMRC).
- (6) In deciding whether to disclose information under this section, the Secretary of State must consider whether the disclosure would prejudice, to an unreasonable degree, the commercial interests of any person concerned.
- (7) In deciding whether to disclose information to an overseas public authority under this section, the Secretary of State must have regard, in particular, to the following considerations—
- (a) whether the law of the country or territory to whose authority the disclosure would be made provides protection against self-incrimination in criminal proceedings which corresponds to the protection provided in any part of the United Kingdom, and

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- (b) whether the matter in respect of which the disclosure is sought is sufficiently serious to justify making the disclosure.
- (8) Except as provided by section 57, the disclosure of information under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (9) In this section—
- “overseas public authority” means a person in any country or territory outside the United Kingdom which appears to the Secretary of State to exercise functions of a public nature which—
    - (a) correspond to the functions of the Secretary of State under this Act, or
    - (b) relate to any of the purposes mentioned in paragraphs (b) to (f) of subsection (2),
  - “public authority” has the same meaning as in section 6 of the Human Rights Act 1998.

## **55 Disclosure of information held by HMRC**

- (1) A person who receives information disclosed under section 54 by Her Majesty’s Revenue and Customs (or anyone acting on their behalf) may not—
- (a) use the information for a purpose other than the purpose mentioned in section 54(1), or
  - (b) further disclose the information,
- except with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (2) If a person discloses information in contravention of subsection (1)(b) which relates to a person whose identity—
- (a) is specified in the disclosure, or
  - (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act (and, accordingly, section 35 of this Act does not apply to that disclosure).
- (3) Except as provided by section 57, the disclosure of information under this section does not breach—
- (a) any obligation of confidence owed by the person disclosing the information, or
  - (b) any other restriction on the disclosure of information (however imposed).

### *CMA information*

## **56 Duty of CMA to provide information and assistance**

The Competition and Markets Authority must give the Secretary of State—

- (a) such information in its possession as the Secretary of State may by direction reasonably require to enable the Secretary of State to exercise functions under this Act,
- (b) any other assistance which the Secretary of State may by direction reasonably require for the purpose of facilitating the exercise by the Secretary of State of functions under this Act and which it is within the power of the Authority to give.

### *Data protection*

#### **57 Data protection**

- (1) This section applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under any provision of Parts 1 to 4 of this Act.
- (2) A duty or power to which this section applies does not operate to require or authorise the disclosure or use of information if the disclosure or use—
  - (a) would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation), or
  - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.
- (3) In this section “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

### *Minor amendments, etc*

#### **58 Minor and consequential amendments and revocations**

Schedule 2 contains minor amendments and amendments and revocations which are consequential on this Act.

### *Disclosure of information under the Enterprise Act 2002*

#### **59 Overseas information disclosure**

In section 243(3)(d) of the Enterprise Act 2002, omit “3 or”.

### *Defamation*

#### **60 Defamation**

For the purposes of the law relating to defamation, absolute privilege attaches to any notice or direction given, or decision, report or order made, by the Secretary of State or the Competition and Markets Authority in the exercise of functions under or by virtue of this Act.

*Annual report***61 Annual report**

- (1) The Secretary of State must, in relation to each relevant period—
  - (a) prepare a report in accordance with this section, and
  - (b) lay a copy of it before each House of Parliament as soon as is practicable after the end of that period.
- (2) Each report must provide details of—
  - (a) the expenditure incurred by the Secretary of State in giving, or in connection with giving, financial assistance falling within section 30,
  - (b) the amount of the actual or contingent liabilities of the Secretary of State at the end of the relevant period in respect of such financial assistance,
  - (c) the number of mandatory notices accepted,
  - (d) the number of mandatory notices rejected,
  - (e) the average number of working days—
    - (i) from receipt of a mandatory notice to notification of a decision to accept that notice, and
    - (ii) from receipt of a mandatory notice to giving written reasons for a decision to reject that notice,
  - (f) the sectors of the economy in relation to which mandatory notices were given,
  - (g) the number of voluntary notices accepted,
  - (h) the number of voluntary notices rejected,
  - (i) the average number of working days—
    - (i) from receipt of a voluntary notice to notification of a decision to accept that notice, and
    - (ii) from receipt of a voluntary notice to giving written reasons for a decision to reject that notice,
  - (j) the sectors of the economy in relation to which voluntary notices were given,
  - (k) the number of call-in notices given,
  - (l) the sectors of the economy in relation to which call-in notices were given,
  - (m) the number of final notifications given,
  - (n) the number of final orders made,
  - (o) the number of final orders varied,
  - (p) the number of final orders revoked.
- (3) “Relevant period” means—
  - (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and
  - (b) each subsequent period of 12 months.

## PART 5

### FINAL PROVISIONS

#### **62 Transitional and saving provision in relation to the Enterprise Act 2002**

- (1) Nothing in this Act has effect in relation to anything that took place before 12 November 2020.
- (2) Subsections (3) and (4) apply in relation to events which constitute a trigger event described in section 2(4), unless any action has been taken under this Act in relation to the events.
- (3) If, disregarding the effect of any amendment made by this Act to the Enterprise Act 2002, the Secretary of State could, in relation to the events—
  - (a) give an intervention notice under section 42(2) of that Act,
  - (b) give a special intervention notice under section 59(2) of that Act, or
  - (c) give a European intervention notice under section 67(2) of that Act,the Secretary of State may give the notice on or after the day on which this section comes into force.
- (4) If any such notice is given in relation to events to which this section applies—
  - (a) before the day on which this section comes into force, or
  - (b) by virtue of subsection (3), on or after the day on which this section comes into force,nothing in this Act has effect in relation to the events (and, accordingly, the Enterprise Act 2002 continues to have effect in relation to the events, disregarding the effect of any amendment made by this Act to that Act.)
- (5) Regulations under section 66(4)(b) may make further provision for the purposes of this section.

#### **63 Regulations under this Act**

- (1) This section applies to regulations under this Act other than regulations under section 66 (commencement regulations).
- (2) Regulations are to be made by statutory instrument.
- (3) Regulations may contain consequential, transitional, transitory or saving provision.
- (4) Subject to subsection (5), a statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing (whether alone or with other provision) regulations under any of the following may not be made unless a draft of it has been laid before Parliament and approved by a resolution of each House—
  - (a) section 6(1),
  - (b) section 11(3),
  - (c) section 41(8).

**64 Financial provision**

Any expenditure incurred by the Secretary of State under or by virtue of this Act is to be paid out of money provided by Parliament.

**65 Interpretation**

In this Act—

“acquirer” has the meaning given by section 5(2),

“assessment period” has the meaning given in section 23,

“attendance notice” means a notice given under section 20(1),

“business” includes—

- (a) a professional practice,
- (b) an undertaking which is carried on for gain or reward,
- (c) an undertaking in the course of which goods or services are supplied otherwise than free of charge, and

references to a person carrying on business include references to a person carrying on business in partnership with one or more other persons,

“call-in notice” means a notice given under section 1(1),

“cost recovery notice” means a notice given under section 45(1),

“cost variation notice” means a notice given under section 46(3),

“final notification” has the meaning given by section 26(2),

“final order” means an order made under section 26(3),

“information notice” means a notice given under section 19(1),

“interim order” means an order made under section 25(1),

“mandatory notice” means a notice given under section 14(1),

“monetary penalty” has the meaning given by section 40(3),

“notifiable acquisition” has the meaning given by section 6(2) (and see subsection (3) of that section),

“notifiable acquisition regulations” means regulations made under section 6(1),

“penalty notice” means a notice given under section 40(1),

“penalty variation notice” means a notice given under section 42(3),

“qualifying asset” has the meaning given by section 7(4),

“qualifying entity” has the meaning given by section 7(2),

“the territorial sea” means the territorial sea adjacent to the United Kingdom,

“trigger event” has the meaning given by section 5(1) and includes, where the context requires, a trigger event that has not yet taken place,

“United Kingdom national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act,

“validation application” has the meaning given by section 16(2),

“validation notice” means a notice given under section 15(2)(b), 16(7)(b)(ii) or 17(2) (and see section 15(3)),

“voluntary notice” means a notice given under section 18(2),

“working day”, in relation to a part of the United Kingdom, means a day other than—

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

## **66 Short title, commencement and extent**

- (1) This Act may be cited as the National Security and Investment Act 2021.
- (2) This Part of this Act and the following provisions of this Act (which contain powers to make regulations) come into force on the day on which this Act is passed—
  - (a) section 6(1),
  - (b) section 11(3),
  - (c) section 14(4),
  - (d) section 16(3),
  - (e) section 18(4),
  - (f) section 36(5),
  - (g) section 41(8),
  - (h) section 53(1).
- (3) The rest of this Act comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Regulations under subsection (3) may—
  - (a) appoint different days for different purposes;
  - (b) make transitional, transitory or saving provision.
- (5) This Act extends to England and Wales, Scotland and Northern Ireland, except that the amendment or repeal of any enactment has the same extent as the enactment amended or repealed.

## SCHEDULES

### SCHEDULE 1

Section 10

#### TRIGGER EVENTS: 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.

##### *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.
- (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.

##### *Indirect holdings*

- 3 (1) An interest or right held indirectly by a person is to be treated as held by the person.
- (2) A person holds an interest or right “indirectly” if the person has a majority stake in an entity and that entity—
- (a) holds the interest or right, or
  - (b) is part of a chain of entities—
    - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
    - (ii) the last of which holds the interest or right.
- (3) For these purposes, A has a “majority stake” in B if—
- (a) A holds a majority of voting rights in B,
  - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B,
  - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (4) In the application of this paragraph to the right to appoint or remove a majority of the board of directors, an entity is to be treated as having the right to appoint a director if—
- (a) a person’s appointment as director follows necessarily from that person’s appointment as director of the entity, or



(b) the directorship is held by the entity itself.

(5) In this paragraph—

- (a) the reference to the right to appoint or remove a majority of the board of directors of an entity is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters,
- (b) the reference to the board of directors, in the case of an entity that does not have such a board, is to be read as a reference to the equivalent management body of that entity,
- (c) references to “voting rights” are to be read in accordance with section 8(7).

#### *Interests held by nominees*

4 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*

- 5 (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—
- (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*

- 6 (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.
- (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—
- (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.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are not for that reason to be treated as not being held.

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

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### *Rights attached to shares held by way of security*

- 7 Rights attached to shares held by way of security provided by a person are to be treated as held by that person—
- (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.

### *Connected persons*

- 8 Two or more persons who are connected with each other (within the meaning given by paragraph 9 or 10) are each to be treated as holding the combined interests or rights of both or all of them.
- 9 (1) Two or more undertakings are connected if they are group undertakings in respect of each other.
- (2) In sub-paragraph (1), “undertaking” and “group undertaking” have the same meanings as in the Companies Act 2006 (see section 1161 of that Act).
- 10 (1) An individual, A, is connected with another individual, B, if—
- (a) A is B’s spouse, civil partner or cohabitee,
  - (b) A is a relative of B,
  - (c) A is the spouse, civil partner or cohabitee of a relative of B,
  - (d) A is a relative of B’s spouse, civil partner or cohabitee, or
  - (e) A is the spouse, civil partner or cohabitee of a relative of B’s spouse, civil partner or cohabitee.
- (2) For the purposes of sub-paragraph (1)—
- (a) two persons who are living together as if they were a married couple or civil partners are cohabitees,
  - (b) references to a spouse, civil partner or cohabitee include a former spouse, civil partner or cohabitee, and
  - (c) “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild of any person, or anyone adopted by a person, whether legally or otherwise, as their child, being regarded as a relative or taken into account to trace a relationship in the same way as that person’s child).

### *Common purpose*

- 11 (1) Two or more persons who share a common purpose in relation to an asset or entity are each to be treated as holding the combined interests or rights of both or all of them.
- (2) The cases in which persons share a common purpose in relation to an entity include (but are not limited to) cases in which the persons co-ordinate their influence on the activities, operations, governance or strategy of the entity.
- (3) The cases in which persons share a common purpose in relation to an asset include (but are not limited to) cases in which the persons co-ordinate their influence on the

way in which the asset is used, and section 9(2) applies for the purposes of this subparagraph.

### *Arrangements*

- 12 (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.
- (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 2

Section 58

### MINOR AND CONSEQUENTIAL AMENDMENTS AND REVOCATIONS

- 1 The Enterprise Act 2002 is amended in accordance with paragraphs 2 to 10.
- 2 (1) Section 23 (relevant merger situations) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) For the purposes of this Part, a relevant 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; and
    - (b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.
  - (2) 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) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.”
- (3) Omit subsections (2A), (4A) and (4B).
- (4) In subsection (5), for “(3), (4), (4A) or (4B)” substitute “(3) or (4)”.
- (5) In subsection (6), for “(3), (4), (4A) and (4B)” substitute “(3) and (4)”.
- (6) Omit subsection (10).
- 3 Omit section 23A.
- 4 In section 35(7) (questions to be decided in relation to completed mergers), for “, for the purposes of section 23(2)(b), the share of supply test is met,” substitute “any such result as is mentioned in section 23(2)(b) has arisen,”.
- 5 In section 36(6) (questions to be decided in relation to anticipated mergers), for “, for the purposes of section 23(2)(b), the share of supply test will be met,” substitute “any such result as is mentioned in section 23(2)(b) will arise,”.

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

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- 6 In section 48(3) (cases where references or certain questions need not be decided), for “, for the purposes of section 23(2)(b), the share of supply test is or will be met,” substitute “any such result as is mentioned in section 23(2)(b) has arisen or the question whether any such result will arise,”.
- 7 In section 58 (specified considerations), omit subsections (1) and (2).
- 8 In section 59 (intervention by Secretary of State in special public interest cases), omit subsections (3)(b)(i), (3B), (8) and (9).
- 9 In section 153 (specified considerations), omit subsection (2).
- 10 In paragraph 20(1) of Schedule 8 (national security) omit “(within the meaning of section 58(1))”.
- 11 In consequence of the preceding paragraphs, the following are revoked—
- (a) the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 ([S.I. 2018/578](#)),
  - (b) the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018 ([S.I. 2018/593](#)),
  - (c) the Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020 ([S.I. 2020/748](#)), and
  - (d) the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020 ([S.I. 2020/763](#)).