



National Security and Investment Act 2021

2021 CHAPTER 25

VALID FROM 04/01/2022

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)).

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Changes to legislation: There are currently no known outstanding effects for the National Security and Investment Act 2021, PART 2. (See end of Document for details)

- (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
 - (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)

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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—
- provision requiring a person, or description of person, to do, or not to do, particular things,
 - 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,
 - provision requiring a person, or description of person, not to disclose the contents of the order except to the extent permitted by the order,
 - 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 United Kingdom national,
 - an individual ordinarily resident in the United Kingdom,
 - a body incorporated or constituted under the law of any part of the United Kingdom, or
 - 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—
- the giving of a final notification or the coming into force of a final order in relation to the call-in notice,
 - such time as is determined by or under the order,
 - such time as it is revoked.

Commencement Information

I1 S. 25 in force at 4.1.2022 by S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

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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
 - (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.

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Commencement Information

I2 S. 26 in force at 4.1.2022 by S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

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.

Commencement Information

I3 S. 27 in force at 4.1.2022 by S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

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—

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- (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.

Commencement Information

14 S. 28 in force at 4.1.2022 by S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

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,
 - (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.

Commencement Information

15 S. 29 in force at 4.1.2022 by S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

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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.

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