



National Security and Investment Act 2021

2021 CHAPTER 25

PART 3

ENFORCEMENT AND APPEALS

Offences

VALID FROM 04/01/2022

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).

VALID FROM 04/01/2022

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.

Status: Point in time view as at 01/07/2021. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the National Security and Investment Act 2021, PART 3. (See end of Document for details)

- (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.

VALID FROM 04/01/2022

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),
 - (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.

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VALID FROM 04/01/2022

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

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association formed or recognised under the law of a country or territory outside the United Kingdom.

Commencement Information

II S. 36(5) in force at 29.4.2021, see s. 66

VALID FROM 04/01/2022

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—

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- (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

VALID FROM 04/01/2022

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—

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- (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.

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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)).

Commencement Information

I2 S. 41(8) in force at 29.4.2021, see s. 66

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13 S. 41(9) in force at 1.7.2021 by S.I. 2021/788, reg. 2(c)

VALID FROM 04/01/2022

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.

VALID FROM 04/01/2022

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.

VALID FROM 04/01/2022

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.

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- (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—
 - (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.

VALID FROM 04/01/2022

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.

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- (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.

VALID FROM 04/01/2022

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.

VALID FROM 04/01/2022

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.

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- (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.

VALID FROM 04/01/2022

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.

VALID FROM 04/01/2022

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),

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- (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.

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- (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.
- (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.

VALID FROM 04/01/2022

Territorial application

52 Extra-territorial application and jurisdiction to try offences

- (1) Sections 32, 33, 34 and 35 apply—

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- (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).

Status:

Point in time view as at 01/07/2021. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the National Security and Investment Act 2021, PART 3.