



National Security and Investment Act 2021

2021 CHAPTER 25

PART 3 **U.K.**

ENFORCEMENT AND APPEALS

Civil sanctions

VALID FROM 04/01/2022

40 Power to impose monetary penalties **U.K.**

- (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.

Status: Point in time view as at 01/07/2021. This version of this cross heading 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, Cross Heading: Civil sanctions. (See end of Document for details)

- (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 **U.K.**

- (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

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

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12 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 **U.K.**

- (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 **U.K.**

- (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 **U.K.**

- (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 U.K.

- (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** U.K.

- (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** U.K.

- (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.

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