

## STATUTORY INSTRUMENTS

# 2021 No. 1262

## The National Security and Investment Act 2021 (Monetary Penalties) (Turnover of a Business) Regulations 2021

### Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Security and Investment Act 2021 (Monetary Penalties) (Turnover of a Business) Regulations 2021, and come into force on 4th January 2022.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) In these Regulations, “the Act” means the National Security and Investment Act 2021 <sup>[F1]</sup>, and “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

**F1** Words in [reg. 1\(3\)](#) inserted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), [Sch. para. 72](#) (with art. 17)

### Commencement Information

**I1** [Reg. 1](#) in force at 4.1.2022, see [reg. 1\(1\)](#)

### Meaning of “business”

2. For the purposes of section 41 of the Act (permitted maximum penalties), “business” includes a sole trader.

### Commencement Information

**I2** [Reg. 2](#) in force at 4.1.2022, see [reg. 1\(1\)](#)

### Control of a business

3.—(1) For the purposes of section 41 of the Act (permitted maximum penalties), a business is to be treated as controlled by another business (“A”) where—

- (a) the business is a body corporate in which A has a controlling interest;
- (b) the business is a body corporate, and A is able to control directly or indirectly or materially to influence the policy of that body corporate without having a controlling interest in that body corporate;
- (c) the business is a partnership or an unincorporated association or group of persons, and A (whether or not A is a member of that partnership, association or group) is able to control directly or indirectly or materially to influence the policy of that partnership, association or group; or

- (d) the business is a sole trader, and A is able to control directly or indirectly or materially to influence the policy of that sole trader in carrying on the activities of the business.
- (2) For the purposes of paragraph (1)(a) and (b), A has a controlling interest in a body corporate if A—
- (a) is a parent undertaking of that body corporate within the meaning of section 1162 of the Companies Act 2006<sup>(1)</sup>; or
- (b) would be a parent undertaking of that body corporate within the meaning of that section if A were an undertaking within the meaning of section 1161 of that Act.
- (3) For the purposes of paragraph (2), subsections (2)(c) and (4)(a) of section 1162 of the Companies Act 2006 are to be disregarded.
- (4) For the purposes of paragraph (1)(b), (c) and (d), the Secretary of State may, having regard to all the circumstances, determine whether A is able to control directly or indirectly or materially to influence the policy of a body corporate or the policy of an individual or a partnership or an unincorporated association or group of persons in carrying on the activities of that business.
- (5) References in this regulation—
- (a) to a body corporate include a body incorporated outside the United Kingdom; and
- (b) to a partnership or an unincorporated association or group of persons include a partnership or unincorporated association or group of persons formed or established, or having any members incorporated, formed or established, outside the United Kingdom.

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**Commencement Information**

**I3** Reg. 3 in force at 4.1.2022, see [reg. 1\(1\)](#)

**Turnover of a business**

- 4.—(1) This regulation applies to determine the turnover of a business (“A”) and any business owned or controlled by A for the purposes of section 41 of the Act (permitted maximum penalties).
- (2) The turnover of a business is its turnover in—
- (a) the complete accounting period immediately preceding the decision date (the “relevant accounting period”) (subject to paragraph (3)); or
- (b) if the business has no relevant accounting period, the period beginning with the date on which the activities of the business began to be carried on and ending with the last day of the month preceding the month in which the decision date falls.
- (3) If the figures necessary to calculate turnover of the business in the relevant accounting period are not available to the Secretary of State on the decision date, the turnover is (subject to paragraph (4)) its turnover in—
- (a) the complete accounting period immediately preceding the relevant accounting period (the “preceding accounting period”); or
- (b) if the business has no preceding accounting period, the period beginning with the date on which the activities of the business began to be carried on and ending with the day immediately preceding the date on which the relevant accounting period began.
- (4) If the figures necessary to calculate the turnover of the business under paragraph (3)(a) or (b) are not available to the Secretary of State on the decision date, the turnover of the business is its

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(1) 2006 c. 46.

turnover in the period beginning with the day after the last day of the relevant accounting period and ending with the last day of the month preceding the month in which the decision date falls.

(5) Where a period described in this regulation does not equal 12 months, the turnover of the business is the turnover in that period divided by the number of days in that period and multiplied by 365 or, if the period includes 29th February, 366.

(6) The amount of a business's turnover for the purposes of this regulation is, in the event of a disagreement between that business and the Secretary of State, the amount determined by the Secretary of State.

(7) For the purposes of this regulation—

- (a) an “accounting period” of a business is a period of more than six months in respect of which accounts are prepared or required to be prepared in relation to the business;
- (b) the “decision date” means the date on which the Secretary of State decides to impose a monetary penalty;
- (c) the provisions of the Schedule apply in the determination of turnover.

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**Commencement Information**

**I4** [Reg. 4](#) in force at 4.1.2022, see [reg. 1\(1\)](#)

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

10th November 2021

*Callanan*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial  
Strategy

**Changes to legislation:**

There are currently no known outstanding effects for the The National Security and Investment Act 2021 (Monetary Penalties) (Turnover of a Business) Regulations 2021.