

2021 No. 1262

NATIONAL SECURITY

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

Made - - - - *10th November 2021*

Coming into force - - *4th January 2022*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 41(8) and (9) of the National Security and Investment Act 2021(a).

A draft of these Regulations was laid before Parliament in accordance with section 63(5)(c) of that Act and approved by a resolution of each House of Parliament.

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.

Meaning of “business”

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

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(a); 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.

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 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.

(a) 2006 c. 46.

(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.

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

SCHEDULE

Regulation 4

Turnover of a business

Interpretation

1.—(1) In this Schedule—

“credit institution” means a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012(a);

“financial institution” means a financial institution as defined in Article 4(1)(26) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, or any undertaking located outside the United Kingdom which does not fall within the scope of that definition but which carries out equivalent activities;

“insurance undertaking” means—

- (a) an undertaking which—
 - (i) has its head office in the United Kingdom;
 - (ii) has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on one or more regulated activities; and
 - (iii) effects or carries out contracts of insurance or reinsurance; or
- (b) a third-country insurance undertaking;

“third-country insurance undertaking” means an undertaking which, if its head office were in the United Kingdom, would require permission under Part 4A of the Financial Services and Markets Act 2000 to carry out regulated activities relating to insurance or reinsurance.

(2) The provisions of this Schedule are to be interpreted in accordance with generally accepted accounting principles and practices.

(a) EUR 2013/575. Article 4 was amended by S.I. 2018/1401, 2019/264, 710 and 1232, and is amended prospectively by the Financial Services Act 2021 (c.22), section 1 and Schedule 1.

Turnover of a business

2.—(1) The turnover of a business is the sum of all amounts derived from the sale of products and the provision of services falling within the ordinary activities of the business to businesses or consumers, after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

(2) But where all or any of the activities of a business are the activities of a credit institution, a financial institution or an insurance undertaking, paragraph 3 or 4 (as the case may be) applies instead of sub-paragraph (1) to determine the turnover of the business in respect of those activities.

(3) Paragraph 5 also applies to determine the turnover of a business for the purposes of this Schedule.

Turnover in respect of activities of a credit institution or financial institution

3.—(1) The turnover of a business in respect of the activities of a credit institution or financial institution is the sum of the following income items received by the institution, after deduction of value added tax and other taxes directly related to those items—

- (a) interest income and similar income;
- (b) the following income from securities—
 - (i) income from shares and other variable yield securities;
 - (ii) income from participating interests;
 - (iii) income from shares in affiliated undertakings;
- (c) commissions receivable;
- (d) net profit on financial operations;
- (e) other operating income.

(2) Expressions used in sub-paragraph (1) have the meanings given by Council Directive (EEC) 86/635 of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions^(a).

Turnover in respect of activities of an insurance undertaking

4. The turnover of a business in respect of the activities of an insurance undertaking is the total value of gross premiums received, comprising all amounts received and receivable in respect of insurance contracts issued by or on behalf of the undertaking, including outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

Further provisions about determining turnover

5.—(1) The turnover of a business is its turnover both in and outside the United Kingdom.

(2) The turnover of a business includes any subsidy given to the business, determined in accordance with paragraph 6.

(3) Where a business (“A”) owns or controls one or more businesses, the turnover of the businesses owned or controlled by A does not include amounts derived from the sale of products or the provision of services between any of those businesses, or any of those businesses and A.

(4) Where in the accounts or other information used by the Secretary of State to calculate the turnover (or any part of the turnover) of a business any figure is expressed in a currency other than sterling, the Secretary of State may determine the equivalent in sterling, applying whatever rate or

(a) OJ No. L372, 31.12.86, p.1, amended by Directives 2001/65/EC (OJ No. L 283, 27.10.01, p. 28), 2003/51/EC (OJ No. L178, 17.7. 03, p. 16), and 2006/46/EC (OJ No. L224, 16.8.06, p. 1).

rates of exchange the Secretary of State considers appropriate and rounding the resulting figure up or down as the Secretary of State considers appropriate.

(5) Where an acquisition, divestment or other transaction or event has occurred since the end of the period in which the turnover of the business is determined in accordance with regulation 3 which the Secretary of State considers may have a significant impact on the turnover of the business, the Secretary of State may take account of that transaction or event if the Secretary of State considers it appropriate to do so and accordingly increase or (as the case may be) reduce by such amount as the Secretary of State considers appropriate the amount which would otherwise constitute the business's turnover.

Subsidies

6.—(1) For the purposes of paragraph 5(2), “subsidy” means financial assistance which—

- (a) is given, directly or indirectly, from public resources by a public authority;
- (b) confers an economic advantage on one or more businesses; and
- (c) is specific, that is, is such that it benefits one or more businesses over one or more other businesses with respect to the production of goods or the provision of services.

(2) For the purposes of sub-paragraph (1), the means by which financial assistance may be given include—

- (a) a direct transfer of funds (such as grants or loans);
- (b) a contingent transfer of funds (such as guarantees);
- (c) the forgoing of revenue that is otherwise due;
- (d) the provision of goods or services;
- (e) the purchase of goods or services.

(3) For the purposes of sub-paragraph (1)(a), “public authority” means a person who exercises functions of a public nature.

(4) Financial assistance given from the person's resources by a person who is not a public authority is to be treated for the purposes of sub-paragraph (1)(a) as financial assistance given from public resources by a public authority if the involvement of a public authority in the decision to give financial assistance is such that the decision is, in substance, the decision of the public authority.

(5) For the purposes of sub-paragraph (4), the factors which may be taken into account when considering the involvement of a public authority in the decision of a person to give financial assistance include, in particular, factors relating to—

- (a) the control exercised over that person by that public authority, or
- (b) the relationship between that person and that public authority.

(6) For the purposes of this paragraph, financial assistance is to be treated as given to a business if the business has an enforceable right to the financial assistance.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the purposes of section 41 of the National Security and Investment Act 2021 (c. 25) (“the Act”), for determining when a business is to be treated as controlled by a business and for determining the turnover of a business.

Section 40 of the Act enables the Secretary of State to impose a monetary penalty on a person in respect of specified offences under the Act. Section 41 of the Act sets out the maximum monetary penalties that the Secretary of State may impose for different offences under the Act. Subsections (1) and (2) of section 41 provide for different maximum penalties for businesses and non-businesses. In relation to businesses, the maximum penalties are the higher of a specified amount

or a percentage of the worldwide turnover of the business and of any businesses it owns or controls.

Regulation 2 provides that for the purposes of section 41 of the Act a business includes a sole trader. Regulation 3 makes provision for determining when a business is to be treated as controlled by another business. Regulation 4 and the Schedule make provision for determining the turnover (both in and outside the United Kingdom) of a business.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

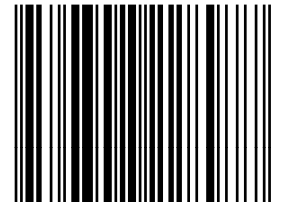
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£6.90

<http://www.legislation.gov.uk/id/uksi/2021/1262>

ISBN 978-0-34-822897-7



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